

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

.
BARBARA E. VARNER, .
Plaintiff, . CIVIL ACTION
 . NO. 1:CV 01-0725
vs. .
 .
COMMONWEALTH OF PENNSYLVANIA, . (JUDGE YVETTE KANE)
NINTH JUDICIAL DISTRICT, .
CUMBERLAND COUNTY; CUMBERLAND .
COUNTY; S. GARETH GRAHAM, .
Individually, and JOSEPH .
OSENKARSKI, individually, .
Defendants. .
.

Deposition of: SAMUEL MILLER

Taken by : Defendant

Date : April 28, 2003, 12:11 p.m.

Before : Emily Clark, RMR, Reporter-Notary

Place : Administrative Office of Pennsylvania
Courts
5034 Ritter Road
Mechanicsburg, Pennsylvania

APPEARANCES:

DEBRA K. WALLET, ESQUIRE
For - Plaintiff

ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS
BY: A. TAYLOR WILLIAMS, ESQUIRE
For - Defendant Commonwealth of Pennsylvania
Ninth Judicial District, Cumberland County

THOMAS, THOMAS & HAER
BY: PAUL J. DELLASEGA, ESQUIRE
For - Defendant Cumberland County

1 APPEARANCES (continued):

2 MONTGOMERY, McCracken, Walker & Rhoads, LLP
3 BY: DAVID J. MacMAIN, ESQUIRE
4 For - Defendant S. Gareth Graham

5 SWEENEY & SHEEHAN, P.C.
6 BY: PAUL LANCASTER ADAMS, ESQUIRE
7 For - Defendant Joseph L. Osenkowski

8 ALSO PRESENT:

9 MS. BARBARA E. VARNER

10 MR. S. GARETH GRAHAM

11 MR. JOSEPH L. OSENKARSKI

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1 I N D E X

2 WITNESS

3 Samuel Miller Examination

4 By Mr. Dellasega 4, 90

5 By Mr. MacMain 34, 96

6 By Mr. Adams 39

7 By Ms. Williams 42, 97

8 By Ms. Wallet 46, 98

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12 EXHIBITS

13 (None marked)

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Miller

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1 STIPULATION

2 It is hereby stipulated by and between the
3 respective parties that sealing, certification and
4 filing are waived; and that all objections except as to
5 the form of the question are reserved until the time of
6 trial.

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8 SAMUEL MILLER, called as a witness, being
9 duly sworn, was examined and testified, as follows:

10 BY MR. DELLASEGA:

11 Q. Mr. Miller, my name is Paul Dellasega. I'm an
12 attorney for Cumberland County in the action brought by
13 Barbara Varner against the county and others.

14 Have you ever testified before, sir?

15 A. Yeah. Not in this, but yeah, I was a police officer.

16 Q. Okay. When were you hired by the county or by the
17 court -- that's a loaded question.

18 When did you become a probation officer?

19 A. With Cumberland County, on December 15th, '83.

20 Q. When did you first meet Mrs. Varner?

21 A. Whenever she was hired, I think. Barb used to work for
22 Children and Youth. It's possible I met her, I
23 probably met her when she was working for Children and
24 Youth. I can't say that I specifically recollect. I
25 know I certainly met her when she came to work for us.

Miller

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1 Q. During the period of time when she worked for Children
2 and Youth, did you ever see her interact with Gary
3 Graham?

4 A. You know, I probably did. I mean, I know they knew
5 each other.

6 Q. How do you know that?

7 A. Just I think they were friends, you know. I can't
8 remember a specific incident where I could say, well, I
9 saw Gary and Barb talking, but I think they knew each
10 other.

11 Q. Okay. At any point did Mr. Graham ever disclose to
12 you, other than with regard to Mrs. Varner, that he's
13 had a sexual affair?

14 A. Did Mr. Graham ever tell me that?

15 Q. Yes.

16 A. No.

17 Q. With anybody.

18 MS. WALLET: I'm not sure your question is clear,
19 Paul.

20 BY MR. DELLASEGA:

21 Q. Has he ever told you: I've had an affair with a
22 woman?

23 A. I don't think so. I mean, I don't -- I don't think so.

24 Q. Has he ever discussed with you wanting to?

25 A. Not like a serious conversation. You know, sometimes

Miller

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1 we would, like, joke about you, like, you know how guys
2 are in the office. There was times that him and I
3 might have said, wow, isn't she nice looking, or
4 something like that. But I never got the impression in
5 a serious way that Gary was having an affair with
6 anybody or wanted to.

7 Q. Within the office, have you ever heard the phraseology
8 Barb 1 and Barb 2 used?

9 A. Yeah. I remember -- I don't have specific recollection
10 as to when it was used, but I know that we've talked
11 about it and I know there was a point in time Barb
12 Laburski was a representative from George Junior
13 Republic that was friends of all of us, and, of course,
14 Gary's wife's named Barb, and Barb Varner worked in the
15 office. So I remember that there was times where
16 certain people would joke about, you know, who's
17 calling, Barb 1, Barb 2, Barb 3, or something like
18 that, you know. But I don't remember the specifics,
19 but I do remember it was brought up sometimes.

20 Q. You specifically remember a Barb 3, then, to go with
21 Barb 1 and Barb 2?

22 A. I think so. I mean, I don't know if I could really
23 swear to, well, I remember on this date that Barb 3 was
24 joked about. But that general -- what's the right way
25 to say it -- that general situation where the Barb 1/

Miller

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1 Barb 2 thing was joked about, or the Barb 3, I think it
2 happened. I can't swear to a specific time or date,
3 but I think it happened.

4 Q. When the Barb 1/Barb 2 thing was joked about, was it
5 ever joked about in the context of something sexual?

6 A. No, not that I recollect. No.

7 Q. Prior to Mr. Graham's transfer, were you aware of the
8 fact that he had at one point confessed to Judge Sheely
9 the existence of a sexual relationship between himself
10 and Mrs. Varner?

11 A. I have to -- I don't think Gary ever told me that
12 personally, you know, that he had talked to Judge
13 Sheely about it. I might be wrong on that. But I
14 remember hearing it from other people, you know, that
15 Gary had gone up and talked to Judge Sheely with his
16 attorney. You know, he had an attorney at the time.

17 Q. Before you ever heard about it in the context of his
18 confession, was there ever any discussion or debate
19 within the office as to whether there was anything
20 going on between Graham and Varner?

21 A. No. I'm not aware of anything. Maybe other people.
22 Nothing that I was ever a part of.

23 Q. You never heard any speculation that the two of them
24 were sexually involved?

25 A. No. I can tell you, I was surprised when I heard that.

Miller

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1 Q. Directing your attention to the period before Probation
2 split into two separate departments, did you ever
3 observe Graham to yell at Mrs. Varner? Prior to the
4 split.

5 A. Yeah. I can't say that I specifically remember
6 observing an instance where Gary was yelling at Barb.
7 I do have a memory that at one point in time Gary being
8 upset, where he would come into our office and he was
9 agitated. And I think one time I went into his office.
10 I don't remember the specifics, but the general gist of
11 the situation was I think Gary was frustrated or upset,
12 at least that's what I perceived. And it was -- I
13 said, what's going on? And he said that this is, I'm
14 paraphrasing, I really don't remember the specifics,
15 but he said that he was frustrated that she had brought
16 some work to him that he was trying to help her with,
17 correct, change, and that he felt she was being
18 defensive and not responding to what he wanted her to
19 do, and that was frustrating him. And he was, I call
20 it work product, he was frustrated with her work
21 product. And I remember saying, you know, relax,
22 because he seemed upset to me. I says, relax, and you
23 guys are friends, you know, work it out.

24 Q. Let me ask you this. Was there any point in time where
25 from your observation Graham and Varner were good

Miller

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1 personal friends?

2 A. I thought they were friends, yeah.

3 Q. Okay. Was there a point in time where that changed,
4 your observation?

5 A. Yeah. I mean, obviously. I can't remember the time
6 scenario, but right before we became aware of the, I
7 think it was right before, right before the lawsuit was
8 filed, you know, we had gone out to Reno as a group and
9 we came back and then I'm hearing all this secondhand
10 and stuff, but then this lawsuit came down. Well, I
11 thought they went -- I can't remember the sequence but
12 I thought, my, that they went from being friends to
13 having a strained relationship.

14 Q. Okay. That transition from being friends to having a
15 strained relationship, to your recollection was there
16 an abrupt shift or a gradual shift?

17 A. I'm not sure if I could -- I guess it was over a couple
18 months. I'm not really sure. I wasn't real close to
19 it. I guess considering how long they knew each other,
20 it was relatively abrupt, but I'm not really sure if
21 that's a fair characterization or not.

22 Q. All right. Before the relationship became strained,
23 did you ever observe Graham to yell at Varner?

24 A. It's possible it happened. I can't remember a
25 specific.

Miller

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1 I'll say this, you know, there was times Gary and
2 I yelled at each other, you know what I'm saying, where
3 we would get mad at each other. Might have been my
4 fault, might have been his fault. So it wouldn't have
5 been unusual in our office at that time to have a loud
6 exchange. It wasn't like anything we ever -- that I
7 ever felt we permanently held a grudge over. So it's
8 possible it happened between him and Barb. I can't
9 specifically recollect a day that it happened or
10 anything like that.

11 Q. When you say the relationship became strained, describe
12 their interaction before it became strained as compared
13 with their interaction after it became strained.

14 A. Well, they were friendlier, they got along better. I
15 mean, there wasn't -- I guess maybe the most accurate
16 way for me to describe it is that my saying that it
17 became strained was that when I became aware that he
18 was frustrated and upset, and I don't know if
19 uncomfortable is the right word, but didn't like her
20 work product, you know. Then I realized that he wasn't
21 all that pleased with her work performance. You know,
22 at least I suspected that.

23 But I thought it was something they would work
24 out, you know. I didn't think it was a real big deal.
25 I mean, it wasn't unusual in our office at that time

Miller

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1 for two people to maybe have a spat over something
2 and/or maybe they -- we had a lot of -- we work in a
3 pseudo science. There's a lot of, this is just my
4 opinion, there's a lot of different ways to accomplish
5 maybe the same end result. We don't always have black
6 and white answers to the problems we deal with. So it
7 wasn't unusual for people to have disagreements about
8 how to accomplish something, sometimes professionally
9 argue it out. Sometimes somebody would lose their
10 temper and say, you know, you're a bozo, you shouldn't
11 be doing it that way, you know. That wasn't all that
12 unusual. It was kind of -- it's kind of the nature of
13 the job, high stress. A lot of negatives go along with
14 the job in terms of people criticizing us. So there
15 were those kind of interactions.

16 I can't say that, like I said, I can't
17 specifically remember what days or when they happened
18 or between all of it, I mean, I just felt -- I felt
19 like it was that kind of environment from time to time.

20 Q. Okay. After the relationship became strained, did you
21 observe Mr. Graham treat Mrs. Varner worse than he
22 treated any other employee in the office?

23 A. I did not see specific instances of that occurring. I
24 mean, obviously I know that Barb feels that way, that
25 things changed. But I can't -- maybe if someone can

Miller

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1 refresh my memory or prompt me. I can't pull out
2 honestly from my memory where I recollected any
3 specific time that because of him being upset with her
4 that something negative happened.

5 Q. All right.

6 A. I'm not aware of it.

7 Q. He would from time to time be upset with other
8 employees?

9 A. Oh, yeah. There was times him and I would get upset
10 with each other, but I didn't end up with -- I mean,
11 I've thought about this because I figured you'd ask it.
12 I didn't end up with 15 fouls on my test the next day
13 because him and I cursed and swore at each other. I
14 mean, it was one of those things we kind of -- we were
15 probably pissed off for a day or two and then we -- I'd
16 forgot about it and I think he did, too. At least it
17 wasn't evident to me that I got some bad action against
18 me because of it.

19 Q. So after the relationship became strained until he was
20 transferred, by your observation his relationship with
21 Mrs. Varner wasn't significantly different from that
22 with many other employees in the office?

23 A. I didn't see it. I mean, I remember other people --

24 Q. That's what I'm asking.

25 A. Yeah, you know, I remember other people talking that.

Miller

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1 It's real hard to remember exactly all the time frames.
2 I know that when the lawsuit was filed obviously his
3 relationship with Mrs. Varner was drastically
4 different. Gary was tense. The whole office was
5 tense, you know what I'm saying. It wasn't a good
6 situation.

7 It's real hard for me to remember everything that
8 happened before and after. Do you know what I'm
9 saying? I mean, it was definitely -- it was not -- I'm
10 not saying anything necessarily inappropriate happened,
11 but, you know, he wasn't happy for being accused of
12 having a suit filed against him, and that was apparent
13 to me.

14 As far as whether or not I saw specific incidents
15 before the suit was filed, I really -- I can't say that
16 I did. I mean, I just don't remember. I think that
17 there was times they might have argued with each other,
18 but boy, I just can't remember the specific instance.
19 If you bring it to my memory, I might be able to.

20 Q. You've been educated about the law on sexual
21 harassment?

22 A. Yeah. Well, the county, you know, we didn't really get
23 much of that kind of training before this happened.
24 But in the last six years they've sent us to a lot of
25 training. And it's, like, Joe passes out information

Miller

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1 to us, you know, like, bulletins indicating case laws,
2 you know, and things like that. Although I got to be
3 honest with you, it still confuses me, you know.
4 There's a lot of different things to it.

5 Q. Utilizing what you've learned about sexual harassment,
6 can you tell me whether, given your own understanding
7 of sexual harassment, you ever personally observed
8 Graham sexually harass Mrs. Varner?

9 A. Well, I really don't feel qualified to answer that.
10 I'm -- I feel so uncertain about what constitutes a
11 hostile work environment and what doesn't, that I'm
12 telling you honestly I'm confused about those kind of
13 things.

14 I know one thing, we are different in our office
15 now than we were eight, 10 years ago. I don't want to
16 call it running scared or anything, but you really pay
17 attention to this stuff, you know. And you pay
18 attention to things that we might not be sensitive to
19 or upset, like a conversation that Gary and I had might
20 not offend him or I, but if someone overheard it it
21 might them, you know. We really didn't think of stuff
22 like that eight years ago.

23 Now, as an administrator, as a new administrator
24 who is still learning how to deal with it, it's in my,
25 you know, I think of it all the time. But I don't feel

Miller

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1 very comfortable picking out a specific instance and
2 saying, yeah, that was sexual harassment. I think in
3 our office you might be able to make a case because we
4 weren't educated because -- I don't know why, how I
5 would characterize it. Our office might have been in a
6 situation where we all could have acted a little
7 better, you know, been a little more informed about it,
8 you know, things like that, you know.

9 Q. But to be specific, you never heard Graham ask
10 Mrs. Varner for any type of sexual favor?

11 A. Oh, no. No, I never -- I wasn't aware of anything like
12 that.

13 Q. You never heard Graham say anything to Mrs. Varner that
14 had sexual overtones to it?

15 A. I don't think so, no. No.

16 Q. Comparing female probation officers with male probation
17 officers, did Graham treat the female probation
18 officers as a class any worse than he treated male
19 probation officers as a class?

20 A. I don't know. I really don't know.

21 Q. Can you think of any instance where he treated a woman
22 worse than a man because she was a woman?

23 A. I don't know. I mean, I know that Gary treated
24 every -- like, him and I were on friendly terms so I
25 know that -- I felt like Gary and I had a good

Miller

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1 relationship when I worked in the office. And I
2 believe there was other people in the office that
3 probably felt like they were treated differently by
4 Gary than someone like me was. But I don't know if
5 that extends to a specific class or not as far as, you
6 know, the women feeling -- well, obviously, there's
7 been plenty of dialogue about this whole suit. They
8 probably do feel somewhat differently. Certainly Barb
9 feels that way, and maybe some of the other ones do.
10 But I can't say that I know of a specific situation
11 that pointed that out to me.

12 Q. When you look at Mr. Graham's friendships, can you
13 comment for me as to whether he tended to be friendlier
14 and act nicer with the older, more senior probation
15 officers as compared with the newer ones?

16 A. I have to think about that. I mean, I -- he was
17 certainly, my perception was that Gary was friendly
18 with us, me, Denny, Hank, you know, Tom Boyer. We had
19 been there longer and I think, you know, we had worked
20 with him a long time, you know, so I thought we had a
21 friendly relationship, some of us more than others, you
22 know. But I thought Barb was friendly with him.

23 I don't think I would say that the new people
24 weren't friendly with him or anything like that, you
25 know what I'm saying, but he was probably more

Miller

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1 comfortable with us just because we had been through
2 the war, so to speak, we had had a lot of case work
3 between us and things of that nature. I mean, that's
4 my perception. I don't know. I guess I'm not
5 answering your question. I really don't know. I think
6 he was okay with the younger POs.

7 Q. Have you ever heard Osenkarksi treat a woman rudely?

8 A. I'll hesitate before I answer that. I just -- I'm not
9 sure I ever heard an instance where Joe overtly has
10 mistreated somebody. I don't think it's his
11 personality, you know what I'm saying? He's a, what I
12 would consider to be an accommodating person.

13 Q. So if we focus on women particularly, you've never
14 heard of an incident where he's treated a woman
15 inappropriately?

16 A. Well, I know that's the basis of this suit, that
17 they're accusing him of that.

18 Q. What I want to know is what you know about his
19 relationship with the female employees.

20 A. I haven't seen it firsthand. I mean, to me, I don't
21 know if he thinks -- I don't know what's in his head or
22 anything, but I've not seen specific instances where
23 Joe has said to me I'm going to deal with this
24 differently because this is a woman or this is a guy,
25 you know, I haven't seen that from him. Joe's

Miller

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1 pretty -- I think he wants to get along with everybody.

2 Q. Okay.

3 A. You know.

4 Q. Have you ever heard Osenkarksi speak in a demeaning
5 manner about any woman?

6 A. No. I can't recall. I mean, I'm aware of, you know,
7 that you had the issue of referring to the cunt club,
8 that whole scenario. I was really kind of on the
9 outside. I remember people talking about that and I
10 know he was accused of that and he had to go through
11 some kind of formal process, but I wasn't -- I wasn't a
12 part of that and I really don't know the specifics of
13 that other than he was accused of that.

14 Q. Have you ever heard Osenkarksi discuss amongst other
15 probation officers his own personal sex life?

16 A. I don't think so. It kind of blows over, you know.
17 I've heard the stories about the lawsuit and stuff, you
18 know, but I don't think I've ever heard Joe talk in the
19 office with me present about something he was doing
20 sexually with a woman or anything like that. He's kind
21 of -- he wasn't that way with me. I'm not trying to
22 make myself out to be an angel. I could see us having
23 that conversation, we just didn't -- we just didn't go
24 there. I mean, I don't remember that happening.

25 Q. Prior to the split, what was your understanding of the

Miller

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1 role of seniority in your office? What were the
2 seniority rules?

3 A. Well, let me think about that, because I know that
4 changed. I remember when Ken Bolze was there, as a
5 staff we were all generally confused. Ken's process of
6 leadership was not a very clear one, in my opinion. I
7 do remember him having, I think this is an accurate
8 statement, him having seniority rules I was opposed to.
9 It affected me personally, so I'll be the first to
10 admit, I had a person -- I remember, I think Ken, I
11 think he implemented seniority rules which included all
12 county service.

13 I remember a little bit about this, although I
14 can't say I have everything absolutely accurate,
15 because there was a fellow and me that were hired about
16 the same time. I was hired three weeks before him. He
17 had worked in the Sheriff's Department, he had more
18 seniority than me. So I admit I was personally vested.
19 I was, like, boy, that sucks, you know, he's got more
20 seniority than me but I came to the department before
21 he did.

22 So my recollection is that Ken allowed seniority
23 for all county work and that there was a group of us
24 that were opposed to that. I mean, there's nothing we
25 could do about it, but we would gripe about it to him

Miller

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1 and stuff, you know.

2 Then after Ken left, I believe it was addressed
3 and changed by management at that time. I don't know
4 the exact process that they went through, but I assume
5 it was Joe, Gary and probably Tom Boyer. I think Tom
6 was involved with, you know, writing up the policy.
7 And I remember honestly I realized that it's like a
8 personal thing with me, I was happy about it. As a
9 matter of fact, I remember having a conversation with
10 Barb about it. I don't remember all the specifics. I
11 remember us coming back from the Poconos, we were at a
12 training. And her and I disagreed. We were sitting in
13 the back seat, and I don't remember all the specifics,
14 but we talked about it. I think it was me, her and
15 Gary and I don't know, Denny? Was it Denny that was in
16 the car? And Barb and I talked about it. Her and I
17 disagreed, you know.

18 She and I understood, it was like we were both --
19 it benefitted her to have the seniority because she had
20 worked Children and Youth; it benefitted me not to
21 because I was competing with people that were getting
22 more seniority. So I was happy to see it changed, but
23 I wasn't involved in the mechanics of changing it, you
24 know. I wasn't administration at that time.

25 Q. What is your understanding as to why it changed?

Miller

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1 A. I thought -- there might have been more to this than
2 what I know. I thought it was because we really
3 thought that it was unfair, what Ken Bolze had
4 implemented. And the reason it changed was I think --
5 my perspective was we were righting a wrong, you know.
6 Just because Ken Bolze said it, he said a lot of things
7 that were wrong, you know. We thought we were changing
8 something to make it right that had been wrong. I
9 realize not everybody felt that way, but that's the way
10 I felt.

11 Q. Did you ever consider that it might have changed so as
12 to punish Mrs. Varner?

13 A. Well, I think Barb felt that way, but I didn't think
14 so. I don't really know. I thought Gary, Joe and Tom
15 changed it because they thought it was wrong. The
16 common example we threw out was if somebody worked in
17 maintenance or as a janitor in the county for, like,
18 eight years, and after a year or two on the job, on our
19 job, you were giving him 10 years as seniority. And,
20 say, I was a probation officer for seven or eight
21 years, that they were going to have more seniority than
22 me, which was always a heavy factor in determining
23 promotions and obtaining certain levels. Well, you
24 know, that was the example we used. I'm sure that the
25 other side could have examples, too. But it was, like,

Miller

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1 come on, that ain't right, you know, you need to make
2 that right, you know.

3 I think that's why it was changed. That was my
4 perspective as to why it was changed. But I wasn't a
5 part of the conversations with Joe, Gary and Tom. I
6 think their intent was genuine. I don't think they
7 were out to get anybody. I think they were trying to
8 make a wrong a right.

9 Q. Did you ever hear either Graham or Osenkarksi use the
10 phrase peter meter?

11 A. No, I never heard that.

12 Q. Use the phrase black bush to refer to a woman's genital
13 area?

14 A. No. I've never heard that, either.

15 Q. Use the phrase jeehoobees to refer to a --

16 A. Say that again?

17 Q. Jeehoobees to refer to female breasts?

18 A. No. I never heard that, either.

19 Q. Did you ever hear anything about female interns being
20 asked to dance on tabletops?

21 A. I remember that being talked about. That was an
22 accusation. I'm trying to think. I didn't hear that
23 comment being made, I don't think, but I remember that
24 being discussed. I think that -- boy, I hope I'm not
25 wrong on this. I think the accusation was that Joe had

Miller

23

1 said that about I guess an intern. I don't know. You
2 know, I didn't hear it. I heard people in the office
3 talking about it.

4 Q. But you have no personal knowledge of it?

5 A. No. I don't think I was there when Joe said it or when
6 he was accused of it being said.

7 Q. Have you ever heard anything said about new interns in
8 general being told at the first department meeting you
9 have to dance on the tabletop for us?

10 A. Us telling interns to go in --

11 Q. Right.

12 A. I've never been in any meeting -- I can't -- we're not
13 going to do that. You know, that's pretty dumb.

14 Q. Did you ever hear Graham tell Varner any of the
15 following: That she has no fucking sense, no fucking
16 training or no fucking ability?

17 A. No. I never heard that. I'm not saying he didn't say
18 that when he was mad, but I don't recollect him saying
19 that, you know. He told me that once or twice.

20 Q. Told you that?

21 A. No, I'm just kidding. I'm sorry.

22 Q. If you and he had a heated conversation, would that be
23 typical language he might have addressed you to?

24 A. We might have swore at each other. I think I was worse
25 than him in that regard.

Miller

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1 Q. Have you ever been counseled not to help Barbara Varner
2 with regard to any complaint she's made about Graham?

3 A. No. No. As a matter of fact, I figured I'd end up
4 here some day if this thing proceeded, because I was
5 made her supervisor as part of a corrective action
6 plan. As a matter of fact, Barb and I were just
7 talking about this the other day, because I couldn't
8 remember the date and she was able to get me the date.
9 It was June 17th of '97.

10 And it wasn't my idea. But Joe came to me -- I
11 don't really remember Gary coming to me. He might have
12 because it's been a while. But I remember Joe coming
13 to me and saying we need to you do this. My perception
14 was that I was doing him a favor, that it was something
15 that needed to be done to help correct the problem in
16 the office.

17 And I will say this. I knew that Gary, after the
18 suit was filed it was apparent to me, not maybe by a
19 specific action but just in general my sense was that
20 Gary wasn't happy with the situation. But I'll give
21 him credit, he never came to me at the time I
22 supervised Barb Varner, and we were pretty comfortable
23 with each other. I wouldn't say we were best-best
24 friends, like, we didn't grow up together, but we were
25 friendly. But he never came to me and said, you better

Miller

25

1 be tough on her, or you better do this, or you better
2 do that. I was, you know, I didn't feel like I was in
3 a very comfortable position because I didn't really
4 have authority. I had just been put in charge of her
5 because Joe thought that would be best.

6 I found out later I think Barb requested it. You
7 know, I had never had any conversation with Barb about
8 that, you know, prior to that. I didn't know that was
9 going to be -- it wasn't something I solicited or that
10 I anticipated. I guess I'm rambling on. But you know,
11 Gary never came to me and said, please do this, or
12 check on this, or blah blah blah blah blah. That
13 didn't happen.

14 Q. Do you have any supervisory role over Mrs. Varner
15 today?

16 A. Yeah, I'm her supervisor. Since, I think I have this
17 straight, since May 1st when we did the reorganization
18 I directly supervise her. Prior to that, May 1st of
19 2000, and this is '03, 2002, we did a reorganization in
20 our office and I directly supervise her.

21 Prior to that, I was one of the supervisors in the
22 office since July 1st, '01. So it hasn't been very
23 long. So I was a supervisor but I directly became her
24 supervisor in on May 1st, 2002.

25 Q. Can you discuss for us whether it takes a period of

Miller

26

1 time in terms of months or years when you're first
2 hired to become an effective and skilled probation
3 officer?

4 A. I think it does. Yeah, I think it does. I think it's
5 a hard job.

6 Q. Going back to the period of time when in '97 when you
7 first became her supervisor as compared to today where
8 you're currently her supervisor, is she a better
9 probation officer today than she was in '97?

10 A. Probably. I mean, we all grow and get better. I
11 thought she did fine back then and I think she's, I
12 guess she's even doing better now. She's got more
13 experience. Every year you get more experience.

14 And she's kind of regarded in our office as the
15 foremost authority on sexual offense cases, including
16 the changes in the law regarding DNA testing and
17 analysis and things of that nature. It's become real
18 complicated. Not that the other probation officers
19 can't do it, but if I have a question, many times, you
20 know, I'll go to her and ask her.

21 Q. When you first began supervising her in '97, did that
22 supervision include any element of training and
23 counseling?

24 A. I don't think so. Honestly, I mean, I was her
25 supervisor. You know, I was a line PO who was her

Miller

27

1 supervisor as a result of this corrective action plan.
2 I didn't feel real powerful, like I was really a guy in
3 the office making decisions. I'll just being honest
4 with you. I was doing this to try to help out, so.
5 And I was new at it. I wasn't very good at it, in my
6 estimation. It took me a little while. I'm still, you
7 know, I'm still learning how to do it.

8 But the bottom line is I don't really remember
9 Barb and I getting into any in-depth counseling talks.
10 You know, I think, I think, I don't want to speak for
11 her, but I'm guessing we both regarded the situation
12 about the same way. We dealt with each other
13 professionally. We might have subconsciously kept each
14 other a little bit at arm's length. But I tried to
15 make it comfortable for her because I knew, you know,
16 everybody was tense over the whole situation. You
17 know, it wasn't good. And my recollection is we really
18 made an effort not to talk about it. That we might
19 have, over the last six years Barb and I might have had
20 a couple of conversations about something about the
21 lawsuit, usually prompted by something, but that we
22 really made an effort to play it straight, you know,
23 because I knew I was going to end up here.

24 Q. Let me ask you this. As a supervisor have you had
25 occasion to observe that some people you supervised

Miller

28

1 need more supervision than others?

2 A. Yeah. I think that's a fair statement. You get people
3 that are newer and everyone -- the job is so
4 multi-faceted that everyone falls into different
5 categories, you know.

6 Q. Do you have an opinion as to whether today in 2003
7 Mrs. Varner requires less supervision than she did when
8 you first became her supervisor in '97?

9 A. I don't feel -- I mean, I'm probably more qualified to
10 be a supervisor now than I was in '97. I don't think I
11 was very qualified. I think it was one of these things
12 where I was doing a favor.

13 But I think she's the same kind of worker. I
14 mean, my -- I don't want to sound like I know it all,
15 but it looked to me like Barb's always -- we all have
16 strengths and weaknesses. Barb, I think her
17 fundamental strengths deal with the therapeutic end of
18 our job. She came from Children and Youth, she had a
19 background in what I would consider to be therapeutic
20 as opposed to law enforcement. That's not to say she
21 couldn't do the law enforcement end of her job, but I
22 think she was more comfortable in the therapeutic end.
23 So I'm guessing that over time as she's worked on the
24 law enforcement end of our job, you know, petitions,
25 criminal informations, that she's probably gotten

Miller

29

1 better at them, like we all have, you know. But I
2 can't remember, in '97 I thought she was doing fine and
3 I think she's doing fine now.

4 Q. Have you ever given a written statement to anybody
5 about this case?

6 A. A written statement? No. I was called in the very
7 beginning when Deluce, Attorney Deluce, Joe and Gary
8 asked me to go down and -- I don't think I did the
9 writing. I think he took some notes.

10 And then the EEOC lady from Philadelphia, New
11 Jersey, wherever she was going, called me. I didn't
12 write anything. That was over the phone.

13 And then I got called again -- I don't see the
14 attorney here that talked to me -- I think by the
15 county, maybe a couple months ago. And I went down and
16 I didn't give any written statement. They were, like,
17 taking some notes. There were so many attorneys in and
18 out of there. I'm pretty sure --

19 Q. A little bald guy?

20 A. It was a girl.

21 Q. It was a girl?

22 A. Nice-looking blond-haired girl, kind of young, you
23 know.

24 Q. Have you ever talked to Ms. Wallet about the case?

25 A. No. I've talked to her, I know who she is, but we

Miller

30

1 never had a conversation about it.

2 Q. As Ms. Varner's supervisor during the period of time
3 between '97 and today, have you ever felt she's been in
4 any physical danger from Mr. Graham?

5 A. I don't know. I know Gary's pretty pissed off, so I
6 don't know. I don't know. It would concern me.

7 Q. I'm sorry?

8 A. It would concern me. I mean, he gets angry. I mean, I
9 think he's angry. I think he feels like he's been
10 unjustifiably attacked on this. And my honest
11 impression of his personality is that he's not happy
12 about that.

13 And I probably put a little bit more of my -- too
14 much of myself, if I was in his situation. I obviously
15 can't tell what he's thinking but I know he's not
16 happy. And if it was me -- him and I, we have
17 similarities, you know, some similarities, and I think
18 when you get backed into a corner, it's like being a
19 caged animal, you know, if you have that necessary
20 toughness or aggressiveness or whatever it is, I would
21 regard that, I know I regard him, I keep an eye on him
22 when I see him because I don't think he's very happy
23 with any of us.

24 Q. Have you ever heard him say anything that would lead
25 you to believe Varner's physical safety was in

Miller

31

1 jeopardy?

2 A. I haven't heard him saying anything specifically about
3 harming Barb Varner, no.

4 Q. Have you ever heard from any third person that he's
5 threatened to harm Varner physically?

6 A. No. No, I don't think so, no.

7 Q. Has it been your experience that Mr. Graham ever plays
8 favorites?

9 A. Well, I know that -- I believe that some people on
10 staff felt that way. I didn't feel like -- I thought
11 he was a good supervisor for me. I thought he dealt
12 with me the way I needed to be dealt with, both him and
13 Joe. You know, they gave me flexibility. I thought I
14 earned it, but I realize that might not be other
15 people's perception.

16 Like, there's no question Gary treated me fine,
17 you know. I didn't feel like he did anything bad to me
18 or anything like that. I felt like he gave me a lot of
19 flexibility. My perception was that Gary thought I did
20 a pretty good job, that I was working the intensive and
21 that I was in a tough job, so that he gave me that
22 latitude.

23 I realize that other people in the office might
24 have looked at that and said, Gary likes Sam, he treats
25 Sam differently, you know. I didn't feel that way. I

Miller

32

1 mean, I felt like I earned it, you know. I felt like I
2 was doing a tough job and as a result of doing the
3 tough job that I deserved that latitude. But I realize
4 every single probation officer in there probably feels
5 the same way, you know.

6 Q. Have you observed him be critical of younger, newer
7 probation officers in particular?

8 A. Not in particular. I mean, he can be critical
9 sometimes. He can be critical sometimes. Like I said,
10 there was times he was critical where he would address
11 something I did or we would disagree on something. But
12 I didn't see it pinpointed at younger POs, that I'm
13 aware of. I mean, I didn't -- he might have felt -- I
14 don't know, I can't talk for him. He might have felt a
15 need because they were younger to do it.

16 You have to -- at this point in time I wasn't an
17 administrator. Where I was at mentally, I had a really
18 independent job. I considered myself kind of to be on
19 the front lines, like, an intensive PO. And I was
20 doing about 83 things personally, too, with raising my
21 kids and coaching, and so I was out of the office about
22 half the time. I did an unusual job. Sometimes I'd be
23 working at 6:00 in the morning, sometimes 9:30 at
24 night. Not a lot, but I would do those kind of things
25 if it meant getting my job done. So I wasn't real

Miller

33

1 tuned in. I should have probably -- as a supervisor I
2 have to be more sensitive to these things. I wasn't
3 real turned in to what he was doing with other people
4 all the time. I really -- and honestly, I didn't
5 really care. I wasn't -- I mean, I cared how he dealt
6 with me, you know.

7 Q. Let me ask you this. Within the range of what is
8 normal behavior for Graham when supervising other
9 employees, did you observe him to act normally with
10 Mrs. Varner, or to be abnormally harsh, abnormal
11 critical, abnormally abusive?

12 A. I thought they were good friends. I mean, I thought
13 they were good friends until a brief period of time, a
14 relatively brief period of time either right about the
15 time of the lawsuit or maybe a little before, I can't
16 swear as to my time frame, where I thought their
17 relationship was more strained.

18 Q. But did that strained relationship manifest itself in
19 Mr. Graham behaving more abusively to Mrs. Varner than
20 to other employees in the office who he also
21 supervised?

22 A. I think Barb felt that way.

23 Q. Did you observe that?

24 A. Did I personally observe that?

25 Q. Yes.

Miller

34

1 A. No, I can't say that I did. I remember one time him
2 coming into my office where he was agitated and upset,
3 expressed he was agitated and upset, and as a result of
4 that I went over and had a conversation with him in his
5 office. He explained to me it was about work product,
6 and I can't remember the specifics, but I -- he
7 basically said he was frustrated because he felt that
8 he was trying to help her do certain things better,
9 that she was being defensive and, you know, he wasn't
10 happy about that. He was frustrated about that.

11 And I think my take to the whole thing, I don't
12 even know why I was sticking my nose in it, I possibly
13 just was having one of those days and I just said, you
14 know, like, chill out, don't get so worked up over it.
15 And that was about, that was it. I wasn't really into
16 management at that time.

17 I think, I think it must have on that particular
18 incident elevated me to a point that I was a little
19 concerned that he was pretty upset on that specific
20 incident.

21 MR. DELLASEGA: That's all I have.

22 BY MR. MacMAIN:

23 Q. My name's Dave MacMain. We met just before the
24 deposition. I represent Gary Graham. I just have a
25 couple areas I wanted to ask you about.

Miller

35

1 This incident where you said Gary was very
2 frustrated, you said he was frustrated with Barb
3 Varner's work product?

4 A. Yeah. I'm calling it work product. I don't remember
5 what Gary called it.

6 Q. By work product you mean preparing reports and the
7 detail work that goes into your job?

8 A. Yeah. It was some aspects of that. That's what Gary
9 said.

10 Q. Do you recall if it was specific to, I think you
11 described it as a law enforcement, preparing
12 complaints, preparing criminal informations and so
13 forth? Is that what he was frustrated with?

14 A. I do -- I can't remember the whole thing but I believe
15 the example he gave me was it was about a petition. He
16 wanted her to change something on a petition and he
17 felt that -- this is my -- I really don't remember his
18 words but my characterization is I think he felt she
19 was being defensive, you know, didn't want to change
20 it.

21 Q. And I think you had said that basically you break the
22 job into two parts, kind of a law enforcement end and a
23 therapeutic end, and Barb was strong in the therapeutic
24 end but weaker in the law enforcement end? That was
25 your perception?

Miller

36

1 A. There's more parts than that, but you know, in my
2 opinion it's a very complicated job. But what I think
3 I said was that Barb's background to the best of my
4 knowledge was in what I would call therapeutic,
5 although she probably doesn't regard it that way
6 because they do plenty of enforcement at Children and
7 Youth. I'm a dimwit when it comes to Children and
8 Youth stuff because the falls under different regs and
9 we've become more schooled in it recently.

10 But she had a strong background in that, in abuse
11 investigations, things like that, to the best of my
12 knowledge. And I felt that that was the core strength
13 of her expertise. Some of the other things that go
14 along with being a probation officer, she's probably
15 like any other probation officer, she had to learn and
16 acquire as she was on the job.

17 Q. Okay. And that was your experience when you began
18 supervising her in '97, that that aspect, that last
19 aspect you talked about, that we'll call it the law
20 enforcement end, was an area that she needed, like
21 anybody else who was new to improve upon?

22 A. I wouldn't real characterize -- I thought she was fine
23 in everything. I thought -- I don't think I evaluated
24 her. I mean, I don't think -- I could be wrong on
25 that. I don't think I ever did a formal evaluation on

Miller

37

1 her in '97. I might be wrong in that, but I don't
2 think I did. But I at that point in time I thought she
3 did the job as well as any other probation officer on
4 the job.

5 Q. When you said Gary was frustrated with her, frustrated
6 and upset, correct? Did that appear to be a genuine
7 concern based on she wasn't putting out the quality of
8 product as her supervisor he was looking for?

9 A. I don't know. At that point in time I didn't know what
10 was going on. I knew they were friends and it appeared
11 that something was going wrong, you know.

12 Q. This something that was going on wrong, did that happen
13 about the time of this instance you just told us about,
14 this meeting you had where he was very upset with her
15 work product?

16 A. Yeah, I'm saying that was all one -- I think that
17 was -- I think Gary had come in, seemed upset, this is
18 my recollection of it, in my office, and expressed his
19 frustration to Denny and I. And it might not even been
20 to me. I really can't remember the specifics. He was
21 really good friends with Denny, so he would come in a
22 lot and talk to Denny. And then I think he went back
23 to his office and I think I waddled over there and --

24 Q. My question is: Was that about the time you noticed a
25 change in this very friendly relationship?

Miller

38

1 A. I guess. You know --

2 Q. If you know.

3 A. It's really hard for me to keep all the time scenarios
4 straight. It's just I think at one point in time we
5 thought they were real good -- they were good friends.
6 Didn't think anything was going on, but I did think
7 that they were good friends.

8 And then there came a point in time where it was
9 we thought Barb was distressed with Gary and that Gary
10 was distressed with her, too.

11 Q. Okay. My question really simply is: Did that
12 distress, the change in the relationship, coincide at
13 about the same time period that you had this meeting
14 with Gary where he was frustrated?

15 A. It was during that time, yeah, he was upset. Yeah.

16 Q. You said Barb's currently the foremost authority on sex
17 cases in your office?

18 A. Well, yeah. I mean, you know, I hate to label her with
19 that. But she's -- when I received in -- May 1st when
20 we did a reorganization and I have the intake function
21 now, I got it from Hank Thielemann. Hank Thielemann
22 said to me, Barb's good at this, I mean, she
23 understands how to get the therapeutic process going,
24 hook them up with the appropriate counseling. And
25 since that time it's been even more complicated because

Miller

39

1 of the DNA testing rules and some of those things, so
2 I've relied on her.

3 Now, I do feel, and her and I talked about this a
4 little bit, not much, because I don't always tell her
5 what I'm thinking, but I do, I rely on other POs, too.
6 But I'm very comfortable, I think it's something that
7 she -- actually, I think it's something that she feels
8 she's very good at. And I do, too, you know.

9 Q. So I understand when you say sex case, you mean like
10 sexual abuse and sexual misconduct and that type?

11 A. Yeah, like anything from rape, yeah -- actually, you
12 can get a kid doing a burglary but he might be getting
13 sexually abused at home, or maybe something, you know,
14 it's a prevalent in our society.

15 And she's not the only one. I'm not trying to
16 make it out like it's her only -- and that's not the
17 only kind of cases she does. But I think she's, to me,
18 like, someone like me that is not quite as comfortable
19 dealing with cases like that, for whatever reasons, I
20 think she's more comfortable. Like, she has an ability
21 to plug them in with the right kind of treatment, you
22 know, so that's what I meant by that.

23 MR. MacMAIN: Okay, thank you. That's all the
24 questions I have.

25 BY MR. ADAMS:

Miller

40

1 Q. Mr. Miller, I represent Mr. Osenkarski.

2 You were describing the seniority system in your
3 discussion with Mrs. Varner and other persons in a car
4 riding back from the Poconos. You remember that line
5 of questioning?

6 A. Yeah.

7 Q. You have to say yes for the record.

8 A. Yes. Yes, I'm sorry.

9 Q. Would you describe your conversation with Ms. Varner as
10 a debate about this seniority system?

11 A. I guess. I mean, I know we disagreed, to be honest
12 with you, we disagreed. And it didn't, like, turn into
13 anything big, to my recollection. But I know we
14 disagreed. And I understood why.

15 I think the reason it didn't turn into anything
16 big was she had worked a number of years with Children
17 and Youth, and I knew it affected her and it affected
18 me because of other people that could jump over me in
19 seniority. I think we understood that, so we just kind
20 of left it at that. We disagreed.

21 Q. Okay. In your opinion, were her arguments about her
22 position on that issue solely due to her own personal
23 interests of seniority or how it applied to her in the
24 office?

25 A. I guess we're all driven by what affects us. I mean,

Miller

41

1 I'm sure -- I can't see inside her, but yeah, I think
2 that was -- I think it was something that affected her
3 and she felt it was important. And she'll have to make
4 her own argument on that. I can't really remember
5 everything she said, but I'm sure that was important to
6 her.

7 Q. Quickly, she didn't mention anyone else to you during
8 this conversation how they would be negatively
9 affected?

10 A. She might have, Counselor. I mean, there was other
11 people, I remember, I understand there was people on
12 both sides of the aisle here, you know, people that had
13 worked like, here the example of the deputy sheriffs.
14 So there was a group of people on one side of the
15 example aisle, I believe, that felt like they had put
16 in good productive service with other county
17 organizations and they should be given credit for that,
18 understanding that seniority was always probably the
19 most important factor in promotions.

20 And then there was a group of us on the other side
21 of the aisle that said, no, that's, you know, I had
22 worked as a probation officer other places, worked
23 other jobs in criminal justice, that you shouldn't get
24 the extra credit for just working in another county
25 agency, and of course I cited that example. So I

Miller

42

1 understood there was two perspectives. I thought,
2 like, we were all personally involved and how it
3 affected us depended on how that decision went.

4 MR. ADAMS: Okay. I have no other questions.

5 Thank you.

6 BY MS. WILLIAMS:

7 Q. Mr. Miller, I'm Taylor Williams representing the
8 Commonwealth of Pennsylvania, Ninth Judicial District.

9 Back in 1997 when you first supervised Barbara
10 Varner, who informed you that you were going to be her
11 supervisor?

12 A. Well, the court order was cut by Judge Sheely. I
13 don't -- I don't think Judge Sheely ever talked to me
14 personally about it. I could be wrong. Joe Osenkarksi
15 asked me to do it. I remember Joe specifically. Gary
16 might have talked to me about it but I really can't
17 remember that. I remember Joe coming in and asking me
18 to do it. He called it a corrective plan of action.

19 And then the personnel guy in Human Services at
20 that time, Dan Hartnett I think was his name, Dan
21 Hartnett called me down and had a conversation with me
22 about how important it was that I act professionally,
23 no retaliatory behavior, no vindictive, you know, that
24 kind of stuff. And I said yeah, fine.

25 Q. Did you have any subsequent conversations with Judge

Miller

43

1 Sheely about your supervision of Barbara Varner?

2 A. I did. I had one. I figured this would come up. I
3 don't exactly know when it happened. It would have
4 been after the lawsuit happened and I believe after I
5 was appointed her supervisor, somehow where -- you
6 know, these office environments it's amazing everything
7 flies all over the place. Word comes down that
8 something bad was going to happen to Gary, either, you
9 know, I'm not saying this is true but this is what I
10 was hearing, he was either going to be fired or
11 transferred or this or that.

12 And Tom Boyer and I went up to Judge Sheely in
13 support of Gary. And the conversation I had, I didn't
14 do a lot of talking in that meeting, but the
15 conversation I had with Judge Sheely was to the effect
16 I just want you to know, Judge Sheely, you know, with
17 all due respect, it's your decision what you do to
18 Gary, but that the -- I don't know if I called it a
19 corrective action plan, but I said I am currently
20 supervising Barb Varner and to the best of my knowledge
21 everything's going fine, Barb's okay with that, I'm
22 okay with that, I think things are working. If you
23 want to have time to sort through all this without
24 doing something serious to Gary until you come to a
25 final judgment, I think the current situation's okay.

Miller

44

1 That was my point to him.

2 Q. What did Judge Sheely say to you?

3 A. He -- I don't remember all the specifics. He was kind
4 of vacillating back and forth what to do. He was like,
5 oh, geez, you know, what a mess, I think that kind of
6 stuff, you know. And I said, well, I just wanted to
7 let you know. And I said, you can talk to Barb Varner
8 about this but I think, I said I think what we're doing
9 is working, Barb's not complaining to me, I'm okay to
10 keep doing.

11 I thought at that time, right or wrong, I was
12 doing the right thing.

13 Q. Do you remember anything specific that Judge Sheely
14 said to you at that time?

15 A. Not specific.

16 Q. Any other conversations with Judge Sheely?

17 A. No, that's the only one.

18 Q. Related to either Barbara Graham or Gary Graham?

19 A. No. No, not related to Barb or Gary, you know.

20 Q. Or the lawsuit?

21 A. The lawsuit, no. No. No, I didn't talk to him about
22 it.

23 Q. Did you ever have any conversations with Judge Hoffer
24 about Barbara Varner?

25 A. About supervising her?

Miller

45

1 Q. Yes.

2 A. No. About -- I don't know. Maybe a month ago I went
3 up. I initiated it. I says, hey, I'm called for a
4 deposition on this, I says, I'm not one of the guys
5 that came up and talked to you. I know that -- I knew
6 that certain people from our office went up and talked
7 to Hoffer. I says, you and I have never a never had a
8 conversation about this, I'm one of your supervisors.
9 You got any interest in knowing what I'm going to say?
10 And he said -- I guess it was bad timing on my part,
11 but I was kind of like, you know, shouldn't you, like,
12 let your boss know? We worry about the judges, you
13 know what I'm saying.

14 And he looked at me and he says, well, you know,
15 maybe you should have come to me before or talked to me
16 if you had something on your mind, but, he says, at
17 this point in time, he says, just go in and tell the
18 truth. He says, that's all I can tell you.

19 So that was the extent of our conversation.

20 Q. And you've never had any other conversations with Judge
21 Hoffer about Gary Graham, Barbara Varner or the
22 lawsuit?

23 A. No. I wasn't one of the guys that, to this day I
24 don't -- I've never even raised Gary's name to Judge
25 Hoffer. And like I said, when I went up about the

Miller

46

1 giving a deposition, you know, he asked me, he says,
2 you know, are you still supervising her? And I said,
3 yeah. And he said, is everything going okay? And I
4 says, it's going fine, I think. I says, I'm not going
5 to lie to you and say that it's the most comfortable
6 thing in the world, that's not her fault, but, you
7 know, when there's a lawsuit pending you worry about
8 stuff like that, you know. But I says, I'm doing the
9 best I can. And I said, I think she is, too. And he
10 said fine.

11 MS. WILLIAMS: Thanks, Mr. Miller. That's all I
12 have.

13 BY MS. WALLET:

14 Q. Mr. Miller, do you feel you need a break at this
15 point?

16 A. I'm okay. I've got a cold, but I feel okay, it's just
17 a normal cold.

18 Q. Okay. My name is Debra Wallet. I'm here representing
19 Barbara Varner in this matter. If at any time you
20 don't hear me, particularly because of your cold --

21 A. Yeah, I'm a little clogged up.

22 Q. -- will you let me know that?

23 A. Sure.

24 Q. And I will certainly repeat the question.

25 Why did you go to Judge Hoffer just recently?

Miller

47

1 What was in your mind that prompted you to do that?

2 A. I was worried. I was really tense. You know, this was
3 uncomfortable for us coming in here and giving these
4 depositions. I've worked for Joe for 20 years, Gary
5 was my former supervisor, and I currently supervise
6 Barb, you know, and my preference would have been that
7 I didn't have to be here. You know what I'm saying?

8 Q. What were you worried about?

9 A. I guess the negative things that can come out of being
10 part of a lawsuit, you know.

11 Q. Like what?

12 A. Well, I don't know. What negative things can come out?
13 You know. I guess I have to think about that a little.
14 Maybe I shouldn't have gone to Judge Hoffer, you know.
15 I have never had a conversation with Judge Hoffer about
16 anything that went on down there. And I thought, well,
17 I didn't have any idea what anybody was going to ask me
18 when I come in here and I thought maybe I should give
19 him the courtesy because he was my boss, of letting him
20 know what my perspective was.

21 Q. And what did you --

22 A. And so it just concerned me that maybe he would, you
23 know, I'd come in here and say something and he could
24 read a transcript later and say, well, Sam Miller never
25 told me that and he works for me. You know what I'm

Miller

48

1 saying? And so I thought that the right thing to do
2 was to -- well, I'll be honest with you, the first
3 thing I said was, I've been subpoenaed for this
4 deposition, Judge Hoffer, I don't know anything about
5 these things, do I need an attorney? And he said I
6 could call Thomas and Thomas and talk to the guy that
7 sent the subpoena, you know. And me and a couple of
8 guys that have been subpoenaed, we talked about that
9 and, you know, we kind of were like, you know, just
10 suck it up and go do it.

11 And you know, the second issue was do you want to
12 hear some of the things I'm going to say and stuff like
13 that. And he kind of stopped me and said, hey, just go
14 tell the truth.

15 Q. What did you intend to tell him, that is, Judge Hoffer,
16 on that day?

17 A. The same thing that I'm saying here today. You know, I
18 mean, that it's been -- we've tried to do the best we
19 can, that the lawsuit's been tough for our office
20 because it's kind of like a cloud hanging over us, you
21 know, that needs to be resolved. And that I personally
22 feel uncomfortable with the whole situation, you know.
23 I feel like my -- I supervise Barb. I think it's
24 important for me to be fair in my relationship with
25 her, you know. And Gary was my former supervisor, and

Miller

49

1 you know, we haven't talked for probably six years.

2 And Joe's my current boss, you know I mean. It was,

3 like, it's one of those things where I would just as

4 soon keep all my thoughts to myself and not have to say

5 anything about anybody, but I realized that I had to

6 come here and talk about it today.

7 Q. Now, other than today, you've talked to someone from
8 the EEOC?

9 A. Um-hum.

10 Q. Dave Deluce?

11 A. Um-hum.

12 Q. And someone from Mr. Dellasega's office; is that
13 correct?

14 A. Yeah. It was a young girl.

15 Q. Okay. Did anyone else interview you about this case?

16 A. No. No, that was it.

17 Q. Do you believe that you were truthful with the
18 individuals, those three individuals I've identified,
19 about your recollections?

20 A. I think so. I mean, you know, each time you --

21 sometimes you can remember something a little

22 differently. But I don't feel like I was trying to

23 deceive anybody in those interviews.

24 Q. Okay. Did you know that there were notes taken by the
25 individual from the EEOC?

Miller

50

1 A. I guess. I mean, I think what she said to me when she
2 was calling was that she was possibly going to take
3 some notes, but -- and I said fine.

4 Q. Did you ever see those notes?

5 A. Huh-uh.

6 Q. Okay. According to the individual from the EEOC, you
7 were asked: Did you ever see Gary Graham sexually
8 harass Ms. Varner? Hereafter, Barb, which is the name
9 the witness kept calling her. Miller said he did not,
10 but he did see Gary Graham yell at Barb and demean her.
11 He said it was an awful thing to see.

12 Do you remember saying that?

13 A. No, I don't. You know, what might have occurred was I
14 remember there was a time out in the office where it's
15 kind of well known in our office where Gary was loud
16 with Barb outside her office. I didn't see that but I
17 remember people talking about it. And I think what
18 happens is over a period of time, you know, there's --
19 you hear so many people talk about it that it's almost
20 like you were there, you know what I'm saying?

21 I don't think -- I searched my mind. I wasn't
22 there when that occurred but I remember other people
23 talking about it. And you know, maybe -- I didn't
24 intend to intentionally deceive the EEOC officer, but I
25 don't think I ever personally saw it.

Miller

51

1 Q. Okay. Did you ever see Gary Graham yell at Barbara
2 Varner?

3 A. I don't think so. It's possible, but I don't recollect
4 a specific incident where I recall Gary yelling at her.
5 I do recall him being upset with her, but I just don't
6 recall a specific incident, you know, where that
7 happened.

8 Q. You used the term, according to the EEOC, demean her.
9 Do you recall incidents in which he demeaned her?

10 A. Not that I observed, no.

11 Q. Do you think you said it was an awful thing to see?

12 A. That doesn't sound like something -- you know, I
13 can't -- I guess I can't say I didn't say that. I'm
14 kind of rough around the edges. I usually don't talk
15 like that. I'm not a real sensitive guy, you know.
16 I'm kind of, like, I would have said something like it
17 was real bullshit or something like that, you know.
18 But maybe I said it that way.

19 Q. Well, do you think you didn't say it?

20 MR. MacMAIN: Objection to the form.

21 THE WITNESS: All's I can tell you is I've thought
22 long and hard about this, knowing that I had to swear
23 under oath. I do not recall specifically seeing Gary
24 demean her, okay? I was aware that things weren't
25 going well between them. All right? And that Gary had

Miller

52

1 expressed that frustration in our office. I was aware
2 of that.

3 I don't recall the face-to-face where I was
4 standing there while they were going at it. If you can
5 give me a specific incident -- you've got to remember,
6 this is over a lot of years, you know. Debbie, I'm not
7 saying it didn't happen. I'm saying I can't remember
8 that. I really don't remember a specific incident.

9 BY MS. WALLET:

10 Q. Did you believe there was any truth to the rumor that
11 Mr. Graham and Barbara Varner had some sort of a sexual
12 affair?

13 A. Well, initially I was stunned by that, you know, I just
14 didn't -- that really -- and then, you know, I mean,
15 over the years we've all sat around and gone, geez,
16 could that have happened? You know. And you know,
17 that was one of the things I'm really not real
18 comfortable talking about.

19 I don't know. I don't know what happened between
20 them. I know Barb has said that nothing happened and
21 Gary has said that there has. And it surprised the
22 hell out of me. If something happened, it would
23 have -- it surprises me, you know? I never picked that
24 up.

25 Q. According to the EEOC investigator, you said you

Miller

53

1 doubted that they had an affair.

2 A. Well, that's fair. I still doubt that, yeah. I didn't
3 think -- I'll say that, I mean, it's just an opinion, I
4 just -- I didn't see that happening. I'm sorry, I just
5 didn't see that happening.

6 Q. Did you observe anything sexual between Mr. Graham and
7 Ms. Varner?

8 A. No, I didn't. I mean, we were all friends and we
9 would -- the office environment, I can't remember
10 specifics but the office environment was such that
11 sometimes people would joke around and kid around what
12 we perceived as joking. It might not have been
13 appropriate, but -- and I'm not saying -- I can't
14 remember specific incidents where that happened between
15 Gary and Barb, but it might have happened.

16 But I never at any time witnessed what where my
17 little flag went up and said, man, that's a little too
18 comfortable, you know, there's something going on with
19 them or something like that. I didn't see that. I
20 didn't pick that up.

21 Q. Did Gary Graham ever discuss with you his sexual
22 relationships?

23 A. Gary and I talked about girls sometimes, you know, and
24 women.

25 Q. Did he talk about his wife?

Miller

54

1 A. Well, I mean, we would both talk about our families
2 sometimes, but I can't say that I remember the
3 specifics. But it wouldn't be unusual, he might talk
4 about his kids or I might -- we have a -- let me get
5 this straight. His oldest daughter is a senior and my
6 oldest daughter's a senior, and his youngest daughter I
7 believe is in ninth grade and my youngest daughter is a
8 ninth grader, so we would, you know, we would compare
9 notes sometimes. And of course, there's always that
10 common gripe about our wives not treating us right or
11 something like that, you know. But I don't remember
12 specifics. I'm sure that happened.

13 Q. Did he ever talk to you about his sexual relationship
14 with his wife?

15 A. No, not -- not like a counseling situation, you know.
16 I mean, I remember that we would sometimes joke about
17 those kind of things. But I don't remember the
18 specifics. Like, I can tell you that Gary never came
19 to me and said, hey, I'm really having problems at
20 home, I need to talk to you, you know. It was a kind
21 of a thing where I think, I thought he had a good
22 family and things were good and everything was fine. I
23 mean, I'm not the one that knows everything, but I
24 thought everything was okay.

25 Q. Did you ever hear him talk about sexual relationships

Miller

55

1 that he had had with people before he was married?

2 A. Well, sometimes we -- yeah, when guys got behind closed
3 doors we would talk about those kind of things. I
4 really can't remember the specifics, but -- and I
5 couldn't even sit here and swear, well, Gary told me
6 this or Gary told me that. But I know how I am, and
7 I'm sure I know I talked to Gary about it, and I'm sure
8 he talked to me about it, too. But Debbie, I can't --
9 I can't tell you a specific incident where he said,
10 well, I was with this girl or that girl or something
11 like that. It wasn't, it's just been too long, you
12 know. And it wasn't a big enough impact on me. It was
13 just kind of, like, guys fooling around with each
14 other. Half the time I don't think we would tell
15 the -- we tell the truth to each other, you know, it's
16 like one of those type of things.

17 Q. Did Mr. Osenkarski talk to you about any of his sexual
18 relationships?

19 A. No, I don't think. So I can't ever remember -- you
20 know, Joe was older, Gary and I were more the same age,
21 I don't think Joe ever talked to me -- I mean, it's
22 possible. It sure doesn't stick out in my mind, you
23 know what I'm saying.

24 I knew that Joe had got divorced at one point in
25 time, he went through a divorce and he wasn't very

Miller

56

1 happy about it. But you know, he pretty much kept it
2 to himself. He's kind of, like, a strong guy that just
3 kind of deals with it on his own.

4 Q. Did Mr. Osenkarski ever use the F word in your
5 presence?

6 A. I can't specifically remember that. He might have. I
7 will tell you this, I'm not proud of it, I probably
8 swear more than him. When him and I were together I'm
9 sure I used it to him. He might have said it to me. I
10 can't give you a specific time or instance that he said
11 it to me, you know, but it wouldn't have been beyond us
12 to curse.

13 Q. Did Mr. Graham use the F word in your presence?

14 A. I'm sure that -- Gary has more -- I always considered
15 Gary to have a little more sophistication than I did.
16 I'm a little rougher around the edges. I curse a lot.
17 It's something I've tried to change, you know. I
18 realize it's important in an office environment not to
19 do that.

20 I think sometimes he cursed when we were talking.
21 I think what happens is I possibly started -- you get
22 caught into that kind of conversation, you know, and --
23 but he wasn't as bad as I was when it came to the
24 cursing. But sometimes when we got together I think we
25 did it.

Miller

57

1 Q. Were these swear words, and let's limit it to the F
2 word at the moment, used in front of female probation
3 officers?

4 MR. ADAMS: Used by whom?

5 MS. WALLET: Either one.

6 THE WITNESS: It's possible. I don't specifically
7 recollect. It wasn't anything that, you know, I would
8 try to have done, you know. It's possible maybe they
9 overheard me or something at some point in time when,
10 you know, when I didn't mean them to. I can't -- no
11 one ever came to me and said, hey, stop your cursing
12 or -- that I'm aware of or anything like that, you
13 know.

14 BY MS. WALLET:

15 Q. Okay. Let me ask a more specific question. Did you
16 ever hear Gary Graham use the F word in front of female
17 probation officers?

18 A. I can't remember. I'm not telling you that it didn't
19 happen. It's possible. I can't remember a specific
20 instance where Gary was F this or F that.

21 We did have -- I mean, I want to be honest with
22 you, we had a pretty, what I considered to be a pretty
23 rough office environment in that, I'm not saying this
24 makes it right, but there would be profanity. And it's
25 certainly possible that in communicating that there was

Miller

58

1 profanity used in front of female POs.

2 I kind of, I would consider, you know, like I know
3 Barb was our friend. I mean, I wasn't as close to her
4 as Gary was, you know. I don't know if you would
5 consider us friends. We actually -- we kind of went
6 our own ways. But I could have seen people being
7 comfortable enough to swear in front of her, you know.
8 Not saying that that's right, but it could have
9 happened.

10 Q. Did you ever observe Mr. Osenkowski to use the F word
11 in front of female probation officers?

12 A. Again, it's possible. I feel bad, like I'm such a --
13 if you guys swore it wouldn't stick out in my mind
14 enough that I'd say, oh, he shouldn't have done that,
15 you know? I have to work on those kind of things.

16 He might have. I don't remember it. It never --
17 there's no specific incident where I remember him doing
18 that, where I thought to myself, oh, he shouldn't have
19 talked like that to a female probation officer.

20 Q. Did either Mr. Graham or Mr. Osenkowski ever tell you
21 as your supervisor that such language was not
22 appropriate in the office?

23 A. I don't think so. I mean, I don't want to make it
24 sound like it was terrible. I mean, every once in a
25 while we would get upset and we would curse and swear,

Miller

59

1 but no one -- I learned that, you know, as a result of
2 that lawsuit and the education we've had I realize
3 those kind of things are very important, you know.
4 Prior, I didn't give it that much thought, you know.

5 Q. Mr. Graham and Mr. Osenkarski might have participated
6 in the general banter in the office?

7 MR. MacMAIN: Objection. That's not what he said.
8 You're asking him about profanity. He says he doesn't
9 recall whether they did or they didn't.

10 BY MS. WALLET:

11 Q. Well, let me ask the question. Did Mr. Osenkarski and
12 Mr. Graham participate in the general banter within the
13 office?

14 A. If by banter you mean talking and participating in
15 whatever was going on, yeah. I mean, they weren't
16 excluded from that.

17 Q. And there were times when that included profanity?

18 A. I think so. I mean, I believe so.

19 Q. And did they on any of those occasions object to the
20 language that was being used?

21 A. Well, sometimes, you know, Joe would tell me to quiet
22 down or something like that, you know. I mean, if I --
23 you can't -- you've got to act professionally, you
24 know, and most of the time if those kind of things were
25 happening it would be behind closed doors.

Miller

60

1 I had a reputation for being loud and, you know, I
2 don't think I'm a threatening person, but that might be
3 to someone else. And there's been once or twice where
4 Joe held a sign up and said, would you please cool it,
5 you know, will you tone down. So you know, I don't
6 know if that was in regard to profanity or just my
7 decibel level or whatever, you know. So he told me
8 that a couple times.

9 Q. During the period of time that you supervised
10 Ms. Varner did you ever find her work performance or
11 her conduct on the job to be unacceptable?

12 A. No.

13 Q. How have you rated her as an employee?

14 A. At the highest category.

15 Q. And why did you do that?

16 A. Well, I, you know, I could go through this long trilogy
17 of how our evaluations are tough instruments and all
18 this other kind of stuff. But the honest truth is
19 Barb's as good as anybody on staff. She does a good
20 job and so -- you know, I felt a little uncomfortable
21 doing her evaluation this time because I had only been
22 her supervisor for about maybe eight or nine months
23 when I did it, you know what I'm saying? The truth of
24 the matter is I don't see the weaknesses or the
25 problems that would lead me to bring criticism or to

Miller

61

1 put her in a category where she doesn't deserve that
2 kind of evaluation.

3 Q. Do you believe you evaluated her in the same fashion in
4 which you've evaluated the other employees that you
5 supervise?

6 A. Yeah, I think so.

7 Here's the gist of it, you know. I'm not stupid.
8 Maybe some of the things I say comes off like that. I
9 realize anybody we evaluate we can criticize, we can
10 have weaknesses and/or positives. You make a decision
11 as an administrator -- this is my perspective as to a
12 philosophical approach. My approach is to play to
13 peoples' strengths. And I like Blanchard's One Minute
14 Manager, find people doing things right. I believe
15 that a creates a more positive office atmosphere and
16 environment for your employees. Does that mean that I
17 couldn't go around and pull one or two criticisms out
18 of just about everybody in the office? Well, sure. I
19 have them, too. I really believe that's human nature.
20 I believe it's very important to work on the positives
21 and to play to peoples' strengths. That's what I've
22 tried to do in evaluating everybody I've dealt with.
23 And that's the way I feel is the most productive to go
24 about the job in the office.

25 We have a lot of negatives to our job, a lot of

Miller

62

1 stressors. I'm not trying to make excuses but I, you
2 know, I feel like it's the proper way to treat people.
3 The job is so tough, the job has so much stress
4 associated with it, that if I wanted to sit down Barb
5 Varner or anybody else and say, boy, let's look really
6 hard and try to find something you could improve on, I
7 could probably do that if I tried.

8 But the point is everything she's done is
9 certainly acceptable to me. And I've been in the
10 business a long time, and when I look at her strengths,
11 like many of the employees, I evaluate, I feel that
12 she's done an outstanding job. So that's the way I
13 choose to approach it.

14 Q. Now, prior to your coming to Cumberland County
15 Probation Office was your immediately previous
16 experience as a police officer?

17 A. Yeah.

18 Q. And what was your experience as a police officer?

19 A. A lot of midnight shifts. You know, I was there for --

20 Q. Where did you work as a police officer?

21 A. Camp Hill.

22 Q. Camp Hill?

23 A. Yeah. I was there for a couple years.

24 Q. And was that your first job after your education was
25 completed?

Miller

63

1 A. No. I've been -- I graduated -- if you want me to go
2 through this real quick, I graduated from Penn State in
3 '76. I worked juvenile detention in Blair County for
4 three, four months. I was hired as a juvenile
5 probation officer in Blair County for about two years.
6 Enlisted in the military, worked in the intelligence
7 corps in the military as an investigator interrogator
8 for three years. Finished my tour of duty at Carlisle
9 War College, which is what brought me to this area.

10 Hired as a police officer in Camp Hill, worked
11 approximately two years. They had a -- it was an
12 unfair labor practice. There was a union thing filed
13 there and three of us were laid off. And there was all
14 these court actions that eventually the job was
15 reinstated, but in the meantime I was able to get a job
16 with Cumberland County Juvenile Probation, and when my
17 job was reinstated I liked it more at Cumberland County
18 Juvenile, Juvenile Adult, slash, Probation.

19 I did adult -- when I first came we had a combined
20 office. I did adult as well as Juvenile. And then at
21 some point in time Hank Thielemann, who was the
22 previous intensive juvenile probation officer, was
23 tired of it. You know, it's kind of, like, one of
24 those jobs, it's, like, front lines type stuff. I took
25 it, did that for, I don't know, 10, 12 years, whatever

Miller

64

1 it was.

2 During that time, I think in '87 I got my master's
3 degree from Shippensburg, and -- because it was free.
4 I promised my -- I told Gary this once, that the
5 biggest reason -- I realize people's experience is more
6 important. I got my education because I promised my
7 grandfather I would do it, you know, it was, like, a
8 promise I kept to him, you know.

9 I've worked some other, like, part-time jobs. I'm
10 a DUI instructor and all that other kind of stuff. I
11 can go through all that crap but you don't want to hear
12 that.

13 Q. Now, at the time of the split, you had the opportunity
14 to go to Juvenile or to Adult Probation, and you chose
15 Juvenile at that time?

16 A. I did.

17 Q. Why did you choose that?

18 A. A lot of reasons. Number one, I think my heart's
19 working with kids. And number two, truthfully, I was
20 much more comfortable with Joe than I was John Roller.
21 I had worked, I've worked for Joe for 20 years. I felt
22 that, you know, nobody's perfect but Joe's general
23 philosophy about processing kids was similar to mine.
24 You know, I was raised in the '60s, we were kind of,
25 like, more pro kid than we were pro enforcement, you

Miller

65

1 know, we like to keep kids out of the system, do what
2 we could to help them without giving them more serious
3 records. And that's a general, real generalization,
4 but I was comfortable with his philosophy and he was a
5 very good supervisor for me.

6 Q. And you mean Mr. Osenkarski?

7 A. Yeah. For me, because I was kind of, like, a little
8 rebellious, not the easiest person in the world to
9 supervise. And I felt like I did my job. But I know
10 that if someone really tried to put their thumb on top
11 of me that I probably wouldn't have reacted real well
12 to that. Well, Joe, and Gary, for that matter, they
13 gave me flexibility. I think they felt like I did my
14 job. But they allowed me to be independent, do some
15 unusual things. And like, I was coaching and things
16 like that, you know and I might get off work at 2:30,
17 3:00, but then I would work around that and do the
18 extra.

19 All those things added up to me wanting to be a
20 Juvenile PO as opposed to an Adult, where I didn't
21 have -- I didn't really like that kind of work as much,
22 and frankly, I didn't like the people as much, you
23 know, that were administrating the Adult side.

24 Q. Back to what you told to the EEOC, Mr. Miller. This
25 says, Miller explained that he was a supervisor, and I

Miller

66

1 guess I have to tell you what precedes it, the transfer
2 of Mr. Graham, that you knew about that. Basically
3 Hoffer said to Gary that he was disappointed in him and
4 lost faith in him and he was out. Further, Gary then
5 tried to get support for himself by calling people in
6 the department asking for support.

7 Did you tell the EEOC that Gary called people
8 asking for support?

9 A. I don't remember that, but I might have. You know,
10 Gary did call us after he first left. I know he called
11 me once or twice and talked to me. He didn't ask me to
12 do anything specific.

13 But I had heard from Hank Thielemann that --
14 you're reminding me now, I think -- I don't know if
15 this is true or not, but I think he wanted Hank to do,
16 like, a petition, you know, to help him to garner some
17 support.

18 My sense was, Gary never told me this, that Gary
19 was angry that we weren't more supportive of him. I
20 very well could have, you know, I think I probably said
21 that.

22 Now, I don't know if those -- my exact on the
23 exact words I heard that Judge Hoffer used was a couple
24 times removed. I didn't hear it from Judge Hoffer.
25 But what we heard through the office gossip was that

Miller

67

1 Judge Hoffer told Gary that he no longer had confidence
2 in him as a supervisor or a manager. That's what we
3 heard.

4 Q. Okay. According to Miller, most people thought Gary
5 was not a nice person.

6 Did you tell the EEOC that you thought most people
7 didn't think he was very nice?

8 A. I might have. I might have. I mean, I might.

9 Q. Nor did they want to go up against the directives of
10 the judge who had the power to fire all of them.

11 A. Yeah, I mean, I don't -- if you're asking me whether I
12 said that or not? I probably did. I know nobody wants
13 to mess with the judge.

14 And if Gary knows that Hank had -- I should let
15 Hank talk for himself, but I think Hank had
16 reservations as to, you know, when a judge says, hey,
17 you're done, well, if we go up and say something, the
18 judge can very well look at us and say, oh, by the way,
19 you can go down and get an office with him at the
20 prison, too, you know. So people are lying if they're
21 not a little afraid of the judge, because they are.
22 We're at-will employees, you know.

23 Q. Miller said Gary treated Barb like shit.

24 A. Well --

25 Q. Did you say that?

Miller

68

1 A. I don't know. I don't know. If she says I did,
2 then -- during that time frame when their relationship
3 was strained? I might have said that. I might have
4 been referring to that.

5 Q. Further, since that time Gary has refused to even speak
6 to them and is mad with all of them.

7 Did you say that?

8 A. Yeah, I probably did. He is. He's been upset with us.
9 That's my perception.

10 Q. Miller also said that Gary is the type of person who
11 believes it is my way or no way. I'm quoting exactly
12 now.

13 Did you say that?

14 A. I don't remember, but I do believe that he's a very
15 single-minded, strong-minded individual and I do
16 believe that -- well, I'll put it this way. I've given
17 a lot of thought to that. You know, in the
18 beginning -- I've kind of gone through a transition on
19 this, too. I've felt that Gary was the type of person
20 that if you disagreed with him, you would pay, so to
21 speak. And when I was being called here for deposition
22 and as this has evolved I sat down and I thought about
23 it, and I can tell you that based on my personal
24 experience, I was wrong about that. Gary and I
25 disagreed plenty of times. He never did anything to

Miller

69

1 me, okay?

2 My impression, it's true my impression was that if
3 you messed with Gar and he got upset with you, that he
4 wasn't the type of person that would often be
5 magnanimous and say, well, it's okay if you disagree
6 with me. That was an opinion I had. All right? I
7 can't say that he ever did that to me.

8 Q. Did he ever use the words in your presence, "people
9 will be punished" or "we'll get even"?

10 A. It's -- I don't recollect those words specifically. I
11 mean, I know the guys have joked around the office
12 where, oh, you're in trouble now, you're going to get
13 three cases tomorrow, you're going to be punished. I
14 mean, we still joke about that somewhat. I'm sure that
15 he probably said something like that.

16 If you're telling me give you a time, a date and
17 testify under oath that I'm sure he said it, I'm not.
18 I think that sometimes we got into banter like that, if
19 him and I were in an argument where I might have said,
20 hey, don't punish me by giving me three extra cases or
21 something like that, you know, so. It wasn't a part of
22 dialogue that I can recollect specifically, but it
23 might have been said, you know.

24 Q. He characterized GG as a vindictive type of person.
25 Did you tell the EEOC that?

Miller

70

1 A. I might have. I mean, I think he can be if he's upset.

2 Q. What do you remember about what you told to the EEOC?

3 A. Here was what I remembered. Obviously, I don't
4 remember the specifics. I remember the conversation
5 being that as far as the sexual harassment, I knew
6 nothing. I had no idea anything was going on between
7 the two of them, and I had no idea as to any specific
8 incidents that had on occurred that in my primitive
9 brain I'd say, well, boy, that's sexual harassment.

10 I do remember saying that, yeah, there was times
11 Gary could lose his temper or be angry and act like an
12 ass. I mean, I did that, too. I remember, you know,
13 Gary saying to us one day kind of half jokingly where
14 he said, well, you know, how can it be discrimination,
15 I'm an ass to everybody sometimes, you know, something
16 of that nature, you know. That was the picture I
17 thought I presented to the EEOC. Yes, Gary could, if
18 he got upset with you, be hard to deal with, that he
19 could be angry.

20 In terms of discrimination, did he pick Barb out
21 and that there was a sexual discrimination involved? I
22 just -- I'm not saying it didn't happen, I'm just
23 saying I just didn't have a lot of knowledge about
24 that. I wasn't tied into being privy to that. I don't
25 know what conversations occurred. That's what I

Miller

71

1 thought I characterized to the EEOC.

2 Q. Did you believe at the time that you spoke to the EEOC
3 that Barbara Varner might have some reason to be
4 fearful with regard to Mr. Graham's activities?

5 A. Well, you know, there's been a lot of history here. I
6 don't want to be melodramatic. Here's my problem. I
7 have a tendency when bad things happen to other people,
8 and by bad things I mean -- this has been a tough
9 ordeal for everybody involved. Barb's been through a
10 lot, Gary's been through a lot. I've seen the impact
11 it's had on Joe over the last five, six years, you
12 know. I tend to say, well, what would you be like in
13 that situation? You know, I put myself.

14 If I was in Gary's situation and based on my
15 opinion of Gary's personality, yeah, I mean, I think
16 Gary's a tough person. We had some things in common.
17 We were both wrestlers; he was a successful wrestler, I
18 wasn't. The bottom line is, I saw him as a tough
19 individual who was being backed into a corner, who at
20 one point in time held a position of prestige in our
21 office, was a good family man. All that changed. I'm
22 not saying whose fault it was, but that all changed.

23 My perspective was if I was in that scenario, I
24 could see myself being a somewhat dangerous individual,
25 like, not being very happy about it, being angry about

Miller

72

1 it, being frustrated. I guess I kind of transferred
2 that to him, I'm thinking, well, he's probably the same
3 way.

4 Q. Did you tell Barb Varner at any time that she ought to
5 watch her back?

6 A. I don't remember saying that to her. Like I said, we
7 haven't had many conversations. I think it's possible
8 that if we were in a conversation that I might have
9 said something like, I can understand your concern, or
10 it's certainly understandable to me, and that's my
11 perception that -- I heard a lot of things from a lot
12 of other people, don't know if it's true or not, as to
13 how angry Gary was. And it's not that I didn't
14 understand it, it's just that it worried me.

15 I know people come in here and say, oh, he doesn't
16 worry, you know. I'll be honest with you, I talked to
17 Billy after he did his deposition a little bit. Billy
18 said that somebody asked him if he was, like, afraid of
19 Gary or this or that, and he says no, and he laughed
20 about it. And I says, well, you got more guts than me
21 because I'd go the other way. That was my impression,
22 I would go the other way. I wouldn't mess with Gary,
23 you know.

24 Q. Did anybody ever tell you that commitment trips had to
25 start at eight o'clock or 8:30 in the morning?

Miller

73

1 A. No, I don't think so no.

2 Q. Did you participate in commitment trips?

3 A. Occasionally. You know, I didn't go on many. I was
4 one of the -- I did go, I mean, I'm not going to make
5 it sound like I didn't go on a commitment trip, but I
6 was one of the people who didn't like commitment trips
7 and so I would pawn it off when I could. If one of my
8 kids was getting committed, I would recruit people and
9 say, hey, will you take my kid for me, you know. And
10 so I went on far less commitment trips than most
11 intensive probation officers did through the course of
12 Cumberland County Juvenile.

13 MS. WILLIAMS: Could we go off the record for a
14 minute?

15 (Recess taken from 1:45 until 1:57 p.m.)

16 BY MS. WALLET:

17 Q. Did you ever take any commitment trips that started at
18 a time other than eight clock or 8:30 in the morning?

19 A. Yeah.

20 Q. Did anyone tell you that that was not appropriate?

21 A. I don't remember specific incidents. It was discussed
22 that we needed to be conscientious and efficient.
23 There would be a lot of times, like a lot times I'd go
24 with Tom Boyer. Him and I are both early birds, so
25 we'd start at 6:00 in the morning, you know, so we

Miller

74

1 could get done early.

2 I do remember conversations in the office where
3 there were times you might not take off till noon or
4 1:00 and the gist was you needed to have a good reason
5 for that. You know, you needed to not be stealing from
6 the county, so to speak.

7 Q. Did anyone dock your pay for having started a
8 commitment trip at some time other than 8:00 or 8:30 in
9 the morning?

10 A. Me? No. No.

11 Q. Okay. Now, you said that you and another probation
12 officer went to see Judge Hoffer prior to the action to
13 transfer Gary Graham to the prison, correct?

14 A. Judge Sheely.

15 Q. I'm sorry.

16 A. Judge Sheely.

17 Q. Okay.

18 A. We went to see Judge Sheely. So, about what point in
19 time was that? You know, obviously it was after the
20 lawsuit it was filed. I believe it was after I was
21 appointed Barb's supervisor in June of '97.

22 Q. So you think it was sometime in the summer of 97?

23 A. I'm not saying that. I really don't -- well, Judge
24 Sheely left in December of '97.

25 Q. Correct.

Miller

75

1 A. So obviously it was sometime between June and December
2 of '97. I've thought about this because I figured it
3 would come up. I don't remember. Tom Boyer was the
4 other PO, so he might remember. He's a lot more
5 detailed than I am.

6 MR. MacMAIN: Can I ask one timing question? You
7 keep using the term when the lawsuit was filed. Do you
8 mean when the complaint was first made by Ms. Varner?

9 THE WITNESS: Yeah. I'm using the wrong -- the
10 first time I knew about it was in that March or April
11 of '97.

12 MR. MacMAIN: Okay. That's fine.

13 THE WITNESS: Being filed is probably not the
14 right word, you know.

15 MR. MacMAIN: That's fine.

16 MS. WALLET: Thanks.

17 BY MS. WALLET:

18 Q. Who decided to go to Judge Sheely at that time?

19 A. It was Tom. I would like to sit here and take credit
20 for it, but it wasn't me. It was Tom, and I -- he
21 said, do you want to go with me, and I said yeah.

22 Q. Okay. Did he ask anyone else to go with him, to the
23 best of your knowledge?

24 A. No, not to the best of my knowledge.

25 Q. Did Mr. Boyer ask you or tell you that you ought to do

Miller

76

1 this?

2 A. Oh, no, no. There was no intimidation involved in
3 that. I went because I wanted to go. At that time I
4 felt bad for Gary.

5 Q. Okay. And at that time, what had you heard about the
6 possible ramifications for Mr. Graham?

7 A. Well, I was hearing office rumors that he could
8 possibly be fired, or at the very least wasn't going to
9 be a supervisor anymore. Something bad was going to
10 happen to him.

11 Q. Okay. And so you and Mr. Boyer went to see Judge
12 Sheely. What was your purpose?

13 MR. ADAMS: Objection, asked and answered. He's
14 already testified to it twice.

15 BY MS. WALLET:

16 Q. What was your purpose? You may answer.

17 A. I wanted -- you know, I can't speak for Tom. I wanted
18 to make it clear to Judge Sheely that what Joe called a
19 corrective action plan, that I thought it was working,
20 that I thought it was okay. And that if Judge Sheely
21 needed more time to sort out what actually happened
22 before he made a drastic decision, that he could, you
23 know, put off doing something. Like, once he took Gary
24 out of the position and did whatever it was he was gong
25 to do, whether it would be fire him or send him to the

Miller

77

1 prison, it's pretty hard to rebound off of that, you
2 know.

3 Q. Did you ask Judge Sheely not to take any action against
4 Gary Graham?

5 A. I don't remember those exact words. What I said to
6 Judge Sheely was things, I think things are going okay
7 now, Barb Varner and I have a decent relationship that
8 I think she's okay with and that I believe the problem
9 has been solved.

10 I was optimistic that things could be worked out.

11 Q. Did Judge Sheely at that time ask you anything about
12 the relationship between Gary Graham and Barbara
13 Varner?

14 A. I don't think he asked me anything, no.

15 Q. Did he ask you whether you had observed any sexual
16 harassment between Gary Graham and Barb Varner?

17 A. No, he didn't ask me that.

18 Q. Did he ask you whether you had observed any
19 inappropriate conduct by Gary Graham with respect to
20 Barbara Varner?

21 A. No. No, he didn't ask me that.

22 Q. What was your understanding of the result of that
23 meeting?

24 A. Well, you know, Judge Sheely, he's a judge, he played
25 it close to the vest. He didn't tell us what he was

Miller

78

1 going to do, but I walked out of there under the
2 impression that Gary was in big trouble, you know.

3 Q. Did you believe that he might be fired?

4 A. I thought it was possible. But I knew Danny Meyers, a
5 fellow that worked in the Adult side, had told us that
6 Judge Sheely had talked to the Adult side about this,
7 too, and that there was a possibility that they would
8 do something other than fire him, you know. So, I
9 wasn't really privy to all those conversations, but as
10 you can imagine, rumors were swirling all around what
11 was going to happen.

12 Q. Did you immediately after or shortly thereafter this
13 meeting with Judge Sheely relay what you had done to
14 Gary Graham?

15 A. I don't think so. I don't think I ever talked to Gary
16 about it. I don't think.

17 Q. Do you know whether Mr. Boyer told Gary Graham?

18 A. No, I don't. I don't know if Tom talked to him or not.

19 Q. After that meeting with Judge Sheely, when was the next
20 time anybody asked you about these complaints that
21 Barbara Varner had made against Gary Graham?

22 A. No one ever officially asked me in terms of, like, a
23 judge calling me up or an attorney. The only time I
24 discussed the allegations is when I went down, it must
25 have been March or April, to talk to Deluce, or

Miller

79

1 Deluce's representative. And then the next time is
2 maybe two years later or something like that, when EEOC
3 called me.

4 Q. Okay. Now, did Mr. Deluce ask to speak to you, or did
5 you ask to speak to Mr. Deluce?

6 A. Joe Osenkarksi, I remember Joe specifically, maybe
7 Gary, came to me and said, there's been a complaint
8 filed against us. I don't remember how specific they
9 were, but they said, will you go down and talk to them,
10 because we think it's unfair, you know, and you need to
11 give your perspective.

12 Q. Okay. And did they tell you at that time the subjects
13 that you should discuss with Mr. Deluce?

14 A. I wasn't coached or anything like that. No. They just
15 asked me to go talk to them.

16 Q. That wasn't my suggestion, but did they say to you go
17 talk to him about something?

18 A. Probably. I mean, I think they just said -- I really
19 don't remember for sure, but common sense tells me Joe
20 came to me, he said, we've had complaints filed against
21 us, you know, something to the effect we don't think
22 it's fair, will you go down and give the other
23 perspective or tell them what you know, because we
24 think it's not a good complaint, or something of that
25 nature.

Miller

80

1 Q. And the other perspective being the Osenkarksi-Graham
2 perspective?

3 MR. ADAMS: Objection. That's not what he
4 testified to.

5 BY MS. WALLET:

6 Q. Well, what is the other perspective?

7 A. They wanted to -- I think what had happened was, this
8 is my belief, I'm not saying Joe or Gary said this to
9 me, was that Barb Varner had filed a Complaint and that
10 a number of people had assisted in terms of going to
11 talk to the judge or presenting information that they
12 felt something was wrong with what had occurred between
13 Gary and Barb or Joe and Barb, okay? They felt that it
14 was unfounded or -- not their exact words but my sense
15 was they felt it was unfounded or that it was
16 one-sided, and they wanted me to present my perspective
17 because they thought it would be fairer to them.

18 Q. Did they say to you: Go talk to Deluce and tell our
19 side of the story?

20 A. I don't remember those words. I didn't feel any
21 intimidation or you have to. They just said
22 something's going on, go down and tell what you know
23 about this because we, you know, think this is a bunch
24 of crap, you know, basically.

25 Q. Now, when you went to see Deluce, what did you go to

Miller

81

1 tell him?

2 A. Whatever he wanted to know. He talked to me. He asked
3 me -- I'm not saying it was Deluce. It might have been
4 somebody else from his office. I recollect that was
5 the firm that handled it.

6 He asked me a bunch of questions and I answered
7 them. I can't remember all the questions, but they had
8 to do, I think, with Gary's treatment of Barb. Maybe
9 some things -- I think they asked me about seniority.
10 I mean, it's been a while, you know. I can't remember
11 everything, but they asked me a whole bunch of stuff
12 about what was --

13 Q. Do you remember any of the other subjects?

14 A. It was seniority. I think it was -- I don't think they
15 asked -- I don't think they asked me about Gary and
16 Barb having an affair. I don't think that was brought
17 up. I think it was just stuff like, have you heard
18 Gary Graham curse and swear at Barb Varner. It was
19 those kind of things, okay? And you know, I responded.
20 I mean, I talked to him about it.

21 Q. Okay. Do you remember anything else that Mr. Deluce
22 asked you during that interview?

23 A. No. I mean, that was the general gist, about the
24 complaint and --

25 Q. What did you know about the complaint that Kerry Houser

Miller

82

1 Vohs had made against Joe Osenkarksi?

2 A. Well, I knew it existed. I mean, I knew that -- I
3 didn't see myself as involved in that in any way. I
4 just knew that Kerry had filed a Complaint because of
5 the derogatory term.

6 Q. Okay. And had you heard the term cunt club?

7 A. I can't say that I specifically remember either one,
8 anyone coming in and saying that, you know. I just --
9 it probably would have bounced off of me. I probably
10 wouldn't have been paying attention, you know. I can't
11 specifically recollect.

12 Q. Did you hear the term cunt club?

13 A. After the fact I remember people talking about it
14 saying that was said. Prior to the fact, I don't
15 remember Mr. Graham or Mr. Osenkarski calling it that.

16 Q. What, if anything, did anyone ask you about the Vohs
17 Complaint?

18 A. Nothing. I wasn't interviewed on that or a part of
19 that in any way.

20 Q. Did you talk to any of the other probation officers
21 about the Vohs complaint or the investigation of the
22 Vohs complaint?

23 A. No, not about the investigation. I knew it was
24 happening, and I think there was general conversation
25 in the office about it. I can't remember -- you know,

Miller

83

1 I didn't go to anybody and -- I don't remember a
2 specific conversation.

3 Q. Did you express an opinion about what should be done or
4 not done with regard to the Vohs complaint?

5 A. I don't remember expressing an opinion, to be honest
6 with you, Deb. Back then I was a line PO. I probably
7 didn't think it was a big deal. I mean, I'm not saying
8 that's right, but I was probably, like, you know,
9 what's all the fuss about.

10 Q. Okay. You became a senior probation officer
11 approximately what date?

12 A. You got me on that. I got my PO-II and my juvenile
13 supervisor date but I don't know when I became a senior
14 PO.

15 Q. Do you know how it was that you became a senior PO?
16 Was it the recommendation of someone?

17 A. Yeah, I think so. I mean, we -- you're testing my
18 memory. I know that we had to write up some proposals.
19 We were trying to get people advanced in the office,
20 because things had been stagnant for such a long period
21 of time under Ken Bolze. He did nothing for us.

22 Joe's strength was that he was interested in
23 getting people promoted because he felt that they would
24 be happier, you know. He was right. And so we wrote
25 up, we went through a series -- I just don't remember

Miller

84

1 how that's involved.

2 I remember writing, you know -- I think maybe Dave
3 Meyers and Gary were involved in that, I'm not sure.
4 They wrote up some things about senior PO descriptions
5 and what the requirements were, but I don't remember a
6 lot of the specifics. I don't think I was one of the
7 ones involved in helping write it up. I probably was
8 gripping about it, you know, I wanted to get a
9 promotion.

10 Q. Was it Mr. Osenkarski who made the recommendation for
11 you to be promoted to senior PO?

12 A. I'm guessing. I mean, it was either Joe or -- yeah.
13 Ken probably would have been gone. Somebody's got to
14 help me with that. I don't know. Ken Bolze left in
15 September of '96. I was a PO-II in '98. Or Ken Bolze
16 I think left at the end of '96. He probably wasn't
17 there when I got senior PO, so it was probably Joe.

18 Q. Okay. Was there anyone with more seniority, no matter
19 how you count it, with more seniority than you at the
20 time that you were made a senior PO and they were not?

21 A. No. Because Lyle Herr was the fellow I was telling you
22 about that I was hired three weeks before him. But I
23 think he got senior PO the same time I did, so there
24 wasn't this big issue as to one getting it and one not
25 getting it.

Miller

85

1 Q. When you were made a PO-II, was there anyone who had
2 more seniority than you, no matter how you count
3 seniority, who was not made a PO-II?

4 A. No. No, that was in '98, June of '98, and we had split
5 officially January 1st, '97, but I think it kind of
6 happened in September of '96. So Lyle would have been
7 on the other side and I don't -- nobody else had more
8 seniority than me.

9 Q. Are you aware of any individual who did not have the
10 most seniority on the seniority list as posted for
11 purposes of promotion?

12 A. Yeah. In the old days, yeah.

13 Q. What do you mean by the old days?

14 A. When the department was together. John Roller was
15 promoted over Bob Houser, and I believe Bob Houser had
16 more seniority than John Roller.

17 Q. Anyone else?

18 A. That's the only one I can think of. I mean, everybody
19 talked about it because you're right, it was very
20 unusual.

21 Q. Now, did anyone ever come to you and say, in essence,
22 I'm studying this issue of seniority, what do you have
23 to say about it?

24 A. I don't remember those words, yeah, but I remember
25 talking to Gary about it. I mean, maybe Joe. I was

Miller

86

1 fairly vocal. I thought it was wrong, so I remember
2 griping about it, you've got to change this, you know,
3 do something about it, you know.

4 Q. Listen to my question. Did anyone come to you and say:
5 I am investigating or charged with the decision making
6 regarding the seniority issue and I'm soliciting your
7 opinion?

8 A. Well, yeah. I mean, I'm not saying they used those
9 words, but I remember Gary coming to me and saying, do
10 you think it's right? And I remember talking to him
11 about it and saying, no, it's not right, you know,
12 change it, Ken Bolze was screwed up, he shouldn't have
13 done it that way.

14 Q. Did Gary Graham ever call you and ask you to support
15 Mr. Osenkarski with regard to the charges brought by
16 Ms. Vohs?

17 A. I don't think so. No.

18 Q. Did Mr. Osenkarski ever call you and ask you to support
19 him with regard to the charges brought by Ms. Houser
20 Vohs?

21 A. I don't think so. I mean, I know Joe wasn't happy
22 about it. Nobody ever questioned me about it. I
23 wasn't -- I don't think my input was important, so
24 nobody really had to lobby me to support them, you know
25 what I'm saying? No one ever talked to me about it,

Miller

87

1 really.

2 Q. Where is your office in relation to Ms. Varner
3 presently?

4 A. We're, like, separate ends of the hall. She's down,
5 it's west wing, I think it's called west wing. It's,
6 like, in the new section of the courthouse. You've got
7 to walk down a hall. It's probably a two-minute walk.

8 Q. Okay. And were you at any time in close proximity to
9 her with regard to where your office and her office
10 was?

11 A. Closer. She used to be up at our end and she was in --
12 I don't remember every place she's been, but the last
13 one, all I remember is this cubicle type place, you
14 know, that they built, and I was 25 feet away from her
15 I guess, something like that.

16 Q. Prior to when Mr. Graham was sent to the prison, where
17 was your office in relationship to Ms. Varner's office?

18 A. It was, I was -- I think that's when Barb was in the
19 cubicle. I was always -- I've had two offices, and I
20 was in the old office, which is right beside where I am
21 now, and I think Barb was in the cubicle at that time
22 but I'm not positive. She might have been in another
23 one. I think I was about 25 feet away from her, I
24 think.

25 Q. Did anyone at any time tell you that the reason you

Miller

88

1 were being made the supervisor of Ms. Varner was
2 because they were separating her from Mr. Graham?

3 A. In '97, you mean?

4 Q. At any time.

5 A. Yeah, in a manner of speaking. The corrective action
6 plan was so that Gary wouldn't be in her direct line of
7 supervision because of the Complaint that had been
8 filed.

9 Q. And who told you that?

10 A. Well, I know Mr. Hartnett talked to me about it, the
11 personnel director. And I'm guessing Joe -- I mean,
12 Joe talked to me about the corrective action plan, so
13 -- I don't remember all the specific words but I know
14 that this was -- he was saying you've got to do this
15 because Gary can't be her supervisor.

16 Q. Did he tell you at that time whose decision it was to
17 make you Ms. Varner's supervisor?

18 A. Well, I knew because a court order came down, it was
19 Judge Sheely. He issued a court order and that gave it
20 to me. So I mean, it was pretty clear to me it was
21 Judge Sheely.

22 Q. And what did the court order say?

23 A. To the effect that I was her supervisor from a specific
24 date, I commenced being her supervisor.

25 Q. Did it give a reason?

Miller

89

1 A. I should have looked for it. I think I still have it
2 at the office but I haven't looked at it for so long.
3 I don't think it did.

4 Q. At the time that you were made Ms. Varner's supervisor,
5 who was your immediate supervisor?

6 A. I guess Gary.

7 Q. So Ms. Varner reported to you, you reported to Gary
8 Graham?

9 A. Yeah. I'm trying to think. That was in '97, so Gary
10 was the Juvenile supervisor. Joe was in charge of
11 the -- when did we split? Yeah, yeah. That would
12 have -- Gary was the supervisor and Joe was our
13 director. Okay, what did you ask me again?

14 Q. Ms. Varner was assigned to report to you?

15 A. To me, um-hum.

16 Q. At that time you reported directly to Gary Graham?

17 A. Yeah. Well, Tom Boyer was a PO-II. You know, the
18 chain of command was, I think it was Tom Boyer was a
19 PO-II, then Gary, and then Joe. It would be -- I mean,
20 Gary was my boss.

21 Q. Who was your immediate supervisor at the time that you
22 were assigned to become the supervisor of Barbara
23 Varner?

24 A. Technically I guess it was Tom Boyer, but I felt like
25 it was Gary, in all honesty. I mean, he ran the

Miller

90

1 office.

2 MS. WALLET: That's all I have.

3 BY MR. DELLASEGA:

4 Q. When you met with Judge Sheely did he discuss with you
5 the fact that there had been an affair?

6 A. I don't remember. He might have. I don't remember
7 what he said.

8 Q. Okay. Do you recall a bomb scare last year in the
9 building?

10 A. Yeah.

11 Q. Did Mrs. Varner ever discuss that with you?

12 A. Yeah.

13 Q. What did she say?

14 A. Well, she came out and told me that she had been, I'm
15 paraphrasing here, that we had forgotten, she was left
16 behind, to which I was flabbergasted, you know what I'm
17 saying. I was like, oh, geez, you know. And we talked
18 about it a little bit. Not much, you know. At first I
19 didn't know that she was upset, you know, and then I
20 realized she was upset.

21 After the incident occurred, Human Services came
22 and talked to us, you know, and interviewed us and
23 stuff. I felt bad about it, you know.

24 And I went to her -- I don't remember everything
25 but I remember, I think I apologized and said, I'm

Miller

91

1 sorry, it wasn't anything on purpose to leave you in
2 there, you know. How ironic, it was just -- I just
3 wasn't thinking.

4 Q. Do you have any reason to believe that she consciously
5 was not advised of the bomb threat because she's
6 brought this lawsuit?

7 A. No, I don't think so. I mean, I know on my part it was
8 just an honest mistake. We were checking -- we got
9 notified, we were checking and I was, like, I guess,
10 you know, I evacuated the ship pretty fast, you know, I
11 was one of the first ones. And we got out of there and
12 I -- the office is pretty small. I thought everybody
13 had been told. It was pretty loud what was going on.
14 The sheriff's deputies had come in, kind of announced
15 it to everybody. I thought everybody knew. I mean, it
16 was just -- it was the wrong assumption but, you know,
17 I thought everybody knew.

18 Q. Have you ever used the F word yourself in Mrs. Varner's
19 presence?

20 A. I hope not. I'm not going to say I haven't. I don't
21 recall.

22 Q. Ever used any other four-letter word in her presence?

23 A. Oh, no. No, I haven't. You mean --

24 Q. She's just in the room, not directly to her.

25 A. It's possible that I have cursed in front of her, if

Miller

92

1 that's what you're asking me.

2 Q. Yes, that's what I asking you.

3 A. Yeah.

4 Q. Has she ever complained to you about it?

5 A. No, not directly, but I know from my training it's
6 something I try hard not to do because it's offensive,
7 you know. So I take that for granted not to do it.

8 Q. My specific question is: Has she ever complained to
9 you about your language?

10 A. She's never said to me, Sam, clean up your language,
11 stop cursing. And maybe that's because I did, I don't
12 know. I hope I've never cursed in front of her, but I
13 might have.

14 Q. In the period of time you've been her supervisor, has
15 she ever complained to you about bad language within
16 the office?

17 A. No, I don't think so. No.

18 Q. Is the F word still used in the office from time to
19 time?

20 A. Yeah, from time to time, although we've cleaned up our
21 act a lot. Things are drastically different than what
22 they used to be. We're aware that what isn't offensive
23 to us can be offensive to other people.

24 Q. Since you've been her supervisor, has she ever
25 complained to you about any treatment she's received,

Miller

93

1 other than the bomb scare, that she feels is
2 retaliatory because she brought the lawsuit?

3 A. I don't think so. I don't recall her complaining to
4 me. I know she's under a lot of pressure with this
5 whole lawsuit thing, but I don't recall offhand, no, I
6 don't.

7 Q. Do you think Mrs. Varner is treated with kid gloves as
8 a consequence of the lawsuit?

9 A. Well, I try really hard not to do that. I try to be
10 comfortable with her, treat her like I would anybody
11 else. It would be a lie to say that every time Barb
12 and I interact, of course, I think of the lawsuit, you
13 know. But I don't think it affects our, my
14 relationship with her, because she does her job and I
15 don't have to give her special privileges, so to speak,
16 you know. But it is, it's in my mind, you know, I
17 don't want to be sued.

18 Q. Has anyone else who has been her supervisor ever
19 discussed with you treating her with kid gloves because
20 of the lawsuit?

21 A. No, I don't think so. I mean, if they've asked -- you
22 mean have they asked me to do that? No. No, they've
23 just asked me to be fair to her.

24 Q. Do you regularly give out the -- when you're doing an
25 employee evaluation, do you regularly give out the

Miller

94

1 highest category rating to the people you rate?

2 A. Not to all. A lot of it depends on how I feel about
3 them. I've got some younger employees that I think
4 need to develop some skills. So they have good
5 ratings, I still try to play to their strengths. But
6 you know, there's, like, four or five categories.
7 There's outstanding, there's, like, five categories,
8 and I might give them one notch down or two notches
9 down in certain categories.

10 But there's no question, I think the evaluations I
11 give to people in general are high evaluations, because
12 I try to be a positive person and I try to play to
13 their strengths.

14 Q. Have you ever heard of employees complaining about
15 their evaluation ratings to supervisors?

16 A. Oh, yeah, people are real sensitive about that. I
17 don't mean -- okay, I should have listened to your
18 whole question.

19 I'm not aware of official complaints, but I know
20 that both when I was an employee and as a supervisor,
21 it's not a fun thing to go through. No, people don't
22 like criticism, they don't like to assess their own
23 situation.

24 Q. In your years as a supervisor, have you ever heard of
25 an employee's evaluation being upgraded as a result of

Miller

95

1 them complaining about it?

2 A. I don't know if that actually happened or not. I know
3 one year it was joked about.

4 Q. With regard to who?

5 A. With regard to Gary. I don't know if it's true.

6 Q. With regard to the evaluation Gary received --

7 A. Yeah.

8 Q. -- or the evaluation he gave?

9 A. The evaluation Gary received.

10 Q. Did Mrs. Varner ever discuss with you complaining about
11 her own employee evaluation from another supervisor?

12 A. She didn't discuss it with me. No, I don't think so.
13 I don't think she ever talked to me about a complaint
14 about any of her evaluations.

15 Q. With regard to the other female POs in the office, did
16 you ever hear any of them use the F word?

17 A. I think it's probably happened, you know, with some of
18 them.

19 Q. Okay.

20 A. Although, you know, I wouldn't be able to say a
21 specific instance. But you know, they're not all --
22 you know, it's not really a female-male thing, in my
23 perception. It's kind of, like, what you're
24 comfortable with, your language. You know.

25 MR. DELLASEGA: That's all.

Miller

96

1 BY MR. MacMAIN:

2 Q. I just have a couple questions. In the EEOC statement
3 that you gave I just want to ask about a couple
4 comments you made about Ms. Varner.

5 He, meaning you, said that he thinks Barb got into
6 something that she does not know how to get out of and
7 is probably paranoid of everything that is happening to
8 her, i.e., blowing things out of proportion.

9 Do you remember stating that or something like
10 that to the EEOC investigator?

11 A. That sounds like something I would have said. You've
12 got to understand, I can't remember everything I said.
13 But I feel like probably what I was talking about Barb
14 and Gary were friends, something bad happened, she
15 filed a Complaint. And it's kind of, like, my image
16 was you're kind of fighting for your life, you know,
17 because the sense is once you file that Complaint, it's
18 serious business, you know what I'm saying? Somebody's
19 going to lose their job or this or that. There's,
20 like, no turning back.

21 I had always hoped that whatever problem there was
22 was going to get worked out because they were friends.
23 But you know, obviously that didn't happen so I can't
24 deny I said that.

25 MR. MacMAIN: That's all the questions I have.

Miller

97

1 MR. ADAMS: I have no questions.

2 BY MS. WILLIAMS:

3 Q. Mr. Miller, when you became Ms. Varner's supervisor
4 and Gary was still in the office as a supervisor, did
5 Gary tell you how to supervise Barbara?

6 A. No, he didn't. He -- I was pleased that he didn't put
7 any pressure on me.

8 Q. Okay. Did he tell you how to evaluate her?

9 A. No. I don't recall that. I don't know if I did an
10 evaluation on her. The records would --

11 Q. So he kept his hands off the supervision?

12 A. He did. He played it straight.

13 Q. Did he have any influence over your supervision of
14 Barbara Varner?

15 A. No. Gary knows how I am. I mean, not that I didn't
16 respond to him, because I did. But I'm a little out in
17 left field sometimes and he knew it wouldn't have done
18 him any good, anyway, you know what I'm saying. I was
19 going to handle it the way I saw fit. But he did not
20 try to influence me in any way.

21 Q. So you were totally independent of Gary in your
22 supervision of Barbara?

23 A. I felt that way. I mean, Gary was still my boss, but I
24 didn't -- I didn't like being in the middle of that,
25 let's be honest. I knew right away, I went, oh, shit,

Miller

98

1 you know, here I am, I'm at the deposition table, you
2 know, but -- so I wasn't pleased about that. But I did
3 not feel -- well, Gary, he just, he never gave me a
4 hard time about it. I thought I was doing him a favor.

5 Q. If he had exerted undue influence, would you have gone
6 to Judge Sheely? Or taken some other action?

7 A. No. I'm not that way. I would have not -- first of
8 all, I'm really good at some things and other things
9 I'm not. I would never -- I don't have it in me, I
10 could never have been unfair to Barb because of
11 something that happened between her and Gary. I had it
12 in my mind I was going to do a professional job, treat
13 her fairly, and just try my best to call the shots the
14 way they were.

15 Q. And are you satisfied that that did happen?

16 A. Yeah. I mean, I things were fine.

17 MS. WILLIAMS: Thanks. That's all I have.

18 BY MS. WALLET:

19 Q. Mr. Miller, I really hate to belabor this, but I did
20 not understand your testimony with regard to someone's
21 evaluation being changed. I believe you said that you
22 had heard that someone's evaluation was changed and you
23 were asked who, you responded Gary Graham's. What were
24 you referring to there?

25 A. Well, I think he asked me had I ever heard of anybody's

Miller

99

1 evaluation being changed in the office, and I remember
2 the guys joking one time that they think Gary's was.
3 But I don't know if that's true or not.

4 Q. And was the joke that his evaluation was raised or
5 lowered?

6 A. Raised.

7 Q. And what was the scuttlebutt?

8 A. I don't remember it all. It was, like, that he felt
9 his evaluation was unfair and he complained about it,
10 and they re-evaluated the evaluation. I don't know if
11 that's true or not. That was just, you know --

12 Q. So you have no personal knowledge of any of that?

13 A. No. I was a peon. I wasn't doing the evaluations. I
14 was just listening to all the rumors.

15 MS. WALLET: That's all.

16 MS. WILLIAMS: Thank you very much, Mr. Miller.

17 MR. MacMAIN: Thank you for your patience.

18 (Discussion held off the record.)

19 MS. WILLIAMS: You have the opportunity if you
20 want it, to read your deposition testimony, make any
21 corrections that could be that Emily, because she's
22 hungry and tired, has not been able to transcribe it
23 exactly. She may have heard one word wrong or some
24 such.

25 Do you want to read and sign? Or do you want to

Miller

100

1 waive it? You don't have to read and sign, but if you
2 want to.

3 THE WITNESS: Yeah, I'd like to read and sign it,
4 if that's okay. Sure.

5 MS. WILLIAMS: I guess we'll do it the same way.
6 You'll send the transcript to me. I'm with the court.
7 So I'll then transmit it to you. Okay?

8 THE WITNESS: Okay.

9 MS. WILLIAMS: And then you'll have the chance to
10 read it and make any corrections.

11 (Whereupon, the deposition was concluded at
12 2:33 p.m.)

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COMMONWEALTH OF PENNSYLVANIA)
) SS.
COUNTY OF DAUPHIN)

I, Emily R. Clark, Reporter and Notary Public in and for the Commonwealth of Pennsylvania and County of Dauphin, do hereby certify that the foregoing testimony was taken before me at the time and place hereinbefore set forth, and that it is the testimony of:

SAMUEL MILLER

I further certify that said witness was by me duly sworn to testify the whole and complete truth in said cause; that the testimony then given was reported by me stenographically, and subsequently transcribed under my direction and supervision; and that the foregoing is a full, true and correct transcript of my original shorthand notes.

I further certify that I am not counsel for nor related to any of the parties to the foregoing cause, nor employed by them or their attorneys, and am not interested in the subject matter or outcome thereof.

Dated at Harrisburg, Pennsylvania, this 20th day
of March, 2003.

Emily R. Clark
Reporter - Notary Public

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